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18 WEDNESDAY, MARCH 20, 1991
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21 1:45 P.M.
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24

25 Reported by:
26

27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR DAVID ROBERTI, Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

RAGESHREE RAMACHANDRAN, Member
State Board of Education

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN CRAVEN: Let's go now to Item Three, Governor's Appointee appearing today. We have Rageshree Ramachandran.

Would you come forward, dear. You might tell me how I mispronounced your name so terribly.

MS. RAMACHANDRAN: You got it correct.

CHAIRMAN CRAVEN: I got it correct?

MS. RAMACHANDRAN: Yes, you did.

CHAIRMAN CRAVEN: Well, isn't that fortunate for me. Thank you. My Indian is not too good, I'm afraid.

Please, dear, tell us why you feel you're qualified to be appointed as a Member of the State Board of Education.

MS. RAMACHANDRAN: Well, I think, first of all, the fact that I am a student, a senior in high school, is a primary qualification for being the student member on the State Board of Education, because I see and I feel the effects of the Board's activities.

So, I think I can offer a fresh perspective as the student member. And having been a part of the meetings since last August, I know that the other members are very receptive towards the students' opinions.

I've always been very interested in education, and lately I have wanted to play a role, not just in the classroom, but outside in policy making in education, and I think that by being a student member, I can achieve that.

1
2 CHAIRMAN CRAVEN: Have you served with that group
3 to this time?

4 MS. RAMACHANDRAN: Yes, I have.

5 CHAIRMAN CRAVEN: How long a period have you
6 served?

7 MS. RAMACHANDRAN: From last August, from August,
8 1990.

9 CHAIRMAN CRAVEN: We're just getting her under the
10 wire.

11 Have you enjoyed your tenure with the group?

12 MS. RAMACHANDRAN: Yes, very much. I found it to
13 be a very positive learning experience and a very unique
14 experience, which I'm sure will serve me in the future as
15 well.

16 CHAIRMAN CRAVEN: Very good. You haven't found
17 that those old timers frustrate you too much; have you?

18 MS. RAMACHANDRAN: Oh, no. They're a very
19 interesting group of people and genuinely concerned at the
20 state of education in California.

21 CHAIRMAN CRAVEN: Do any of the Members have any
22 questions or comments to offer to this young lady?

23 SENATOR BEVERLY: I've got to ask about the society
24 or organization you belong to, the Study of Mathematically
25 Precocious Youth. Tell me about that; it's a new one.

26 MS. RAMACHANDRAN: Okay.

27 When I was in 8th grade, right before I turned 13,
28 I took the Scholastic Aptitude Test, and this group, the

1 Study of Mathematically Precocious Youth at Johns Hopkins
2 University, runs a talent search in which they identify the
3 top scoring students under the age of 13 who have taken the
4 SAT.

5
6 What they do is, they send out a newsletter four
7 times a year that contains information about academic
8 opportunities for such students, and it also talks about what
9 these students have been doing in school. It's sort of an
10 honor society based on having taken the SAT.

11 SENATOR BEVERLY: Thank you. I'm impressed.

12 CHAIRMAN CRAVEN: Yes, I think that's most
13 impressive. Precociousness in this instance is a very, very
14 valuable asset; isn't it?

15 MS. RAMACHANDRAN: Yes.

16 CHAIRMAN CRAVEN: Senator Petris.

17 SENATOR PETRIS: I hadn't read the background. I
18 was going to ask her if she gets good grades, but I think
19 that goes without saying.

20 Thank you.

21 CHAIRMAN CRAVEN: Senator Mello, do you have any
22 comment?

23 SENATOR MELLO: I'd like to move her confirmation.

24 CHAIRMAN CRAVEN: Very well.

25 Does anyone in the audience wish to testify? There
26 appears to be none.

27 Call the roll, please.

28 SECRETARY WEBB: Senator Beverly.

1 SENATOR BEVERLY: Aye.

2 SECRETARY WEBB: Senator Mello.

3 SENATOR MELLO: Aye.

4 SECRETARY WEBB: Senator Petris.

5 SENATOR PETRIS: Aye.

6 SECRETARY WEBB: Senator Craven.

7 CHAIRMAN CRAVEN: Aye.

8 SECRETARY WEBB: Senator Roberti. Four to zero.

9 CHAIRMAN CRAVEN: Four-zero; we are happy to
10 confirm you.
11

12 MS. RAMACHANDRAN: Thank you very much.

13 CHAIRMAN CRAVEN: The Members of the Committee join
14 with me in congratulating you on the outstanding scholastic
15 effort which you've made in your young life, and we wish you
16 much success and happiness in the future.

17 MS. RAMACHANDRAN: Thank you very much.

18 CHAIRMAN CRAVEN: Our pleasure.

19 [Thereupon this portion of the
20 Senate Rules Committee hearing
21 was terminated at approximately
22 2:10 P.M.]

23 --oo0oo--
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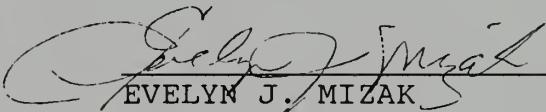
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of March, 1991.


EVELYN J. MIZAK
Shorthand Reporter

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PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JERRY R. KRANS, Member
Board of Corrections

SUZIE COHEN
CPPCA

PAUL W. COMISKEY
Prisoners Rights Union

HARVEY S. NYLAND, Member
Board of Corrections

BLAINE E. PETTITT, Member
Board of Directors
Hastings College of the Law

ANGELE KHACHADOOR, General Counsel
Hastings College of the Law

GARY MICHAEL COUTIN, Alumni
Hastings College of the Law

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
JERRY RICHARD KRANS, Member Board of Corrections	1
<u>Witness in Support:</u>	
SUZIE COHEN California Probation, Parole and Correctional Association	3
<u>Witness in Opposition:</u>	
PAUL COMISKEY, President Prisoners Rights Union	3
Questions by SENATOR CRAVEN re:	
Fiscal Portion of Jail Operations	4
Jails in San Diego County	5
Releasing Prisoners	6
Response from MR. KRANS	6
Questions by SENATOR PETRIS re:	
Efforts Made to Satisfy Court	8
Money Authority of Board	10
Desire to Help Counties Get More Jail Space	10
Need to Hold Voters in Contempt	11
Bergeson Bill	11
Half-Cent Sales Tax Measure	12
Rebuttal by MR. COMISKEY	12
Motion	12
Committee Action	13

1	HARVEY S. NYLAND, Member	
2	Board of Corrections	13
3	<u>Witness in Opposition:</u>	
4	PAUL COMISKEY, President	
	Prisoners Rights Union	15
5	Response by MR. NYLAND	16
6	Motion	17
7	Questions by CHAIRMAN ROBERTI re:	
8	Number of Prisoners in Monterey	
9	County Jail	17
10	Rated Capacity of Jail	18
11	Requests to Board of Supervisors	18
12	Questions by SENATOR PETRIS re:	
13	Expanded Facilities	18
14	Vote on Half-Cent Sales Tax	19
15	Committee Action	20
16	Motion to Hold Roll Open	20
17	Final Committee Action	39
18	BLAINE E. PETTITT, Member	
19	Board of Directors	
	Hastings College of the Law	20
20	Questions by CHAIRMAN ROBERTI re:	
21	Expansion Project Controversy	20
22	Use of Student Trust Money	21
23	Tenure on Board	22
24	Parental Leave Policy at Hastings	23
25	Question by SENATOR CRAVEN re:	
26	Alumni Membership of Board	23
27	Questions by SENATOR PETRIS re:	
28	Faculty Grievance Procedures	24

1		
2	Response by ANGELE KHACHADOUR,	
3	General Counsel, Hastings College	
	of the Law	25
4	Grievance Procedure	25
5	Parental Leave Policy	26
6	Procedure for Appointments	27
7	Lack of Diversity on Board	27
8	Response by MS. KHACHADOUR	29
9	<u>Witness in Opposition:</u>	
10	GARY MICHAEL COUTIN, Alumni	
	Hastings College of the Law	30
11	Lack of Diversity on Board	31
12	Knox Act Unconstitutional	31
13	Legislative Counsel's Advice Incorrect	33
14	Statement by SENATOR CRAVEN	34
15	Statements by SENATOR PETRIS re:	
16	Research	35
17	Need for Lawsuit	35
18	Need to Eliminate Doubt	36
19	Reintroduction of 1990 Bill	36
20	Inability to Alter Board	36
21	Statements by SENATOR PETRIS re:	
22	Possible Conflict of Interest	37
23	Response by MR. PETTITT	37
24	Motion	38
25	Committee Action	39
26	Termination of Proceedings	39
27	Certificate of Reporter	40
28		

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

SENATOR CRAVEN: Let's begin with Governor's appointees appearing today and start with Jerry Krans, Member, Board of Corrections.

Mr. Krans, would you come forward, please, and state your name and tell us why you feel that you're qualified for this important position.

MR. KRANS: Thank you, Senator.

My name is Jerry Richard Krans. I am currently the Assistant Sheriff for the County of Orange. I believe that part of my qualifications are that I've been involved with the Orange County Sheriff's Department for the last 25 years, during that time the last 14 of which have been in the Corrections Department, both as the Captain of the Central Jail and now, for the last 5 years as the Director of Corrections, Chief of Custody for the Sheriff's Department.

During that time period, I've been very active with the State Board of Corrections. I've been involved with a number of committees; have been a consultant to the National Institute of Corrections out of Boulder, Colorado. I've been a consultant with them to develop the megasystems program, which is a system that primarily deals with the training of large jail systems in the state of -- in the United States, systems that have a thousand or more inmates within their particular system. Also, I was one of seven persons selected last year nationally to develop a nationwide large system network in which large

1 agencies can network with each other and find out what the state
2 of the art is in various systems throughout the country.

3 I've been called upon as an expert in several jail
4 cases, testified in court for several counties outside of my
5 own. Was involved with the last three State Board of
6 Corrections revisions, in which they, every two years, review
7 the state minimum standard for all jail facilities in the State
8 of California, and also have been on the original committee for
9 the STC, or the Corrections Selection Training Commission,
10 developing the selection criteria for all probation and parole
11 and state corrections people within the State of California.

12 I've been asked to teach by the state a number of
13 jail seminars, which include the Board of Corrections jail
14 minimum standard. I've been involved on three separate
15 occasions presenting programs on medical issues, both at the
16 California State Sheriffs' Association, the American Jail
17 Association, and also asked to go back to Colorado to present
18 nationally on medical operations and how they interface with
19 jail operations. Taught a number of jail operations and
20 administration classes at Cal Poly Pomona, College of the
21 Redwoods, at U.C.I., University of California at Irvine, and Cal
22 State Fullerton.

23 And I think you have, should be in your file, a
24 number of letters of recommendation from the California Medical
25 Association, State Sheriffs' Association, California Probation,
26 Parole and Correctional Officers' Association. Also, the
27 Federal Master, who's been appointed by the federal court to
28

1 oversee some of the operations in the Orange County jail system,
2 as well as a couple of letters of recommendation from the
3 largest jail managers organizations in the State of California.

4 SENATOR CRAVEN: Very well. Thank you very much,
5 Mr. Krans.

6 Do any of the Members have any comment at this time?

7 Is there anyone in the audience who wishes to speak
8 in favor of this appointment?

9 State your name for the record, please.

10 MS. COHEN: Suzie Cohen, California Probation, Parole
11 and Correctional Association.

12 The Board of Directors of our Association have
13 reviewed the professional qualifications of Mr. Krans and finds
14 him eminently suited for the position on the Board of
15 Corrections.

16 SENATOR CRAVEN: Very well, thank you. Very
17 succinct.

18 Anyone else who wishes to speak in favor? Anyone in
19 opposition to the appointment? There is one person.

20 State your name, please, sir.

21 Mr. COMISKEY: My name is Paul Comiskey. I'm the
22 President of the Prisoners Rights Union. As an organization,
23 we have been suing jails over the last couple of years,
24 including the Orange County Jail.

25 My colleague, Dick Herman, is the person who is doing
26 that suit. He's not here today because he's in court down in
27 Orange County, suing the Orange County Jail because the Orange
28

1 County Jail has more prisoners than the recommendation of the
2 Board of Corrections allows.

3 This jail has been under litigation for 20 years, and
4 in 1985, when Mr. Krans was the person in charge of the jail,
5 the federal judge there, Judge Gray, fined the County \$50,000,
6 and then put a fine, I believe it was \$1,000 per inmate who was
7 over a certain number after that. In other words, he held a
8 little trial and he found them in contempt.

9 Now, I just do not see how the Board of Corrections
10 can have any credibility if the two people who are appointed
11 there as persons who are personnel relating to jails so
12 flagrantly violate the standards of the Board of Corrections in
13 the operation of their jail.

14 SENATOR CRAVEN: May I interrupt you, Mr. Comiskey,
15 to ask you, do you attribute the fiscal undertaking portion of
16 the operation of jails, or at least in the past, to Mr. Krans,
17 or to the County of Orange?

18 MR. COMISKEY: I don't -- obviously, Mr. Krans is not
19 in a position to appropriate moneys, but if he's under a
20 court order to upgrade a jail, and he gets found in contempt, he
21 did not get found in contempt because the County didn't give him
22 money. He got found in contempt because he had too many people
23 in his jail, or than he was allowed to have there.

24 SENATOR CRAVEN: Could you have said the same thing
25 about the County of San Diego?

26 MR. COMISKEY: I don't -- I'm not familiar with the
27 County of San Diego.
28

1 SENATOR CRAVEN: You're not familiar with it, and I
2 am, and you could have. The same thing happened.

3 MR. COMISKEY: If the -- any sheriff who violates a
4 court order basically has no reason to do that. If he has a
5 federal judge who orders, "You can have this many people in your
6 jail," and he overloads it, then he's basically flagrantly
7 violating the law.

8 SENATOR CRAVEN: Well, I think we all understand
9 that, and I guess under the law there's no question that they
10 are in error.

11 But the more pragmatic aspect of such activity is one
12 that relates to the fiscal situation, wherein there are not
13 sufficient facilities to take care of the caseload, and there is
14 no money available to build new facilities, and that's when you
15 run into that problem.

16 I mention that only to say that what you attribute to
17 Mr. Krans, and I'm not denying that, is something that I've
18 heard before in my own county, which is San Diego.

19 MR. COMISKEY: Basically, what you would seem to be
20 implying by that statement is, it's okay for a person who runs a
21 jail to violate a federal court order. And that seems like a
22 very strange position for somebody you're going to appoint to a
23 board that has the responsibility of setting standards for jail
24 operations, and has the responsibility for inspecting the jails,
25 and has the responsibility for handing out the money -- very,
26 very important functions -- and you're going to give this
27 function to people who flagrantly violate court orders.
28

1 SENATOR CRAVEN: Let me ask you, would it be, in your
2 judgment, an equal violation to just take those persons accused
3 of a crime and sentenced to time, to let them go out on the
4 street?

5 MR. COMISKEY: Well that's -- you know, federal
6 judges decide how many people you can constitutionally put in
7 jail, and they make an order to the sheriff and say, "Mr.
8 Sheriff, you can have this many people in your jail. These are
9 the conditions under which you can keep them."

10 Now, this is what happened. This was a federal
11 judge's order.

12 SENATOR CRAVEN: Yes, sir.

13 MR. COMISKEY: And there was a hearing with the full
14 panoply of rights given. And at the end of that, the judge
15 found Orange County in contempt and fined them \$50,000. I don't
16 think judges do that lightly, and I don't think they do that in
17 situations when they feel a person is making good faith efforts
18 to comply and gets caught in some sort of jam. I think \$50,000
19 means something.

20 SENATOR CRAVEN: Yes.

21 Senator Beverly, do you have any comment?

22 SENATOR BEVERLY: I'd like to hear from the Sheriff
23 on that issue.

24 MR. KRANS: At the particular time that the County
25 was found in contempt of court, contrary to the statement just
26 made, I was not in charge of Corrections at that particular
27 time. It was in March of 1985. I happened to be a Captain in
28

1 charge of a planning unit at that particular time.

2 I was appointed as the head of Corrections Division
3 in September of 1985.

4 The particular contempt citation that the County
5 faced at that time, the federal court had not put a cap on the
6 Orange County jail system. It was as a result of the March,
7 1985 hearing that the cap was in fact imposed, at which time the
8 County was in fact fined \$50,000. And the issue basically was
9 that the judge did not allow or did like the fact that people
10 were sleeping on a mattress on the floor, as opposed to upon a
11 bunk. The judge ordered us at that time to have everybody to
12 sleep on a bunk, and then proceeded to fine the County \$10 per
13 day per inmate until that particular situation was corrected.

14 The County at that time did some extraordinary
15 efforts in building some temporary structures. Unfortunately, a
16 couple of those still exist today, in the fact with some
17 trailers and some tents that inmates were placed in at that
18 particular time. The judge then, subsequently, about six
19 months later, stopped the fine and reduced the fine by 50
20 percent, stating that the County had in fact in good faith
21 shown an effort to try to resolve the overcrowding problem that
22 the judge cited in March of 1985.

23 At that same time, a Federal Master was appointed,
24 which has subsequently been relieved due to the efforts that
25 have been done by the County and the Sheriff in dealing with the
26 particular overcrowding issue.

27 The County itself was found in contempt of court at
28

1 that particular time because they had not provided the resources
2 to the Sheriff in order to build additional jail facilities.
3 The Sheriff was also found in contempt of court at that time
4 because the judge stated that if the Sheriff had asked the Board
5 of Supervisors for a jail bed, they would not find the sheriff
6 in contempt of court.

7 The County at that particular time was represented by
8 the County Counsel, who represented both the Board of
9 Supervisors and the Sheriff. The Sheriff had contacted the
10 Board, in fact a letter had been sent on October the 31st, 1977,
11 prior to the first hearing every being asked, at which the
12 County Counsel had a copy of the letter sitting on the Counsel's
13 table at that particular moment. The County Counsel made the
14 decision not to put a conflict between the Sheriff and the Board
15 of Supervisors, chose not to present that particular piece of
16 evidence. And that was the reason that the Sheriff was found in
17 contempt along with the Board of Supervisors.

18 SENATOR CRAVEN: Anything further, Senator?

19 Senator Petris.

20 SENATOR PETRIS: I think that's a very serious
21 charge, the contempt. I'd like to ask, what are those efforts
22 that were made that ultimately satisfied the court?

23 It seems to me Senator Bergeson carried a bill for a
24 new jail in her county. I don't know if it met that answer.

25 MR. KRANS: We've done several things since that
26 particular case in 1985. The immediate reaction from the Board
27 of Supervisors was to allocate some money for some temporary
28

1 structures that would hold us through until some of the state
2 bond issue became available, which did become available in 1986.
3 We opened a new intake and release center, which now houses
4 approximately 500 inmates in January of 1988, and are currently
5 under construction for another 608-bed facility in the City of
6 Orange, which will be completed in August of next year. And
7 one housing unit will also be completed in September of this
8 year, which will house an additional 300 inmates.

9 The thing that satisfied the judge at that particular
10 time was that we in fact built some temporary structures. We
11 actually constructed four large tents, or instant structures as
12 the company that we purchased them from prefers to call them,
13 which we still have to date, which the federal judge, as Mr.
14 Comiskey indicated, was out yesterday and today reviewing the
15 facilities again. He has been out there on one previous
16 occasion.

17 The Board also allocated some money to build some
18 temporary buildings that were actually a construction camp which
19 we've taken down, remodeled, and now house approximately an
20 additional 400 inmates in that.

21 So, based upon those efforts, the judge said that the
22 County had in good faith tried to comply with his orders, and
23 like I mentioned, reduced the fine that he initially imposed by
24 50 percent, appointed a Master which he subsequently released
25 approximately two years later, when he said that the County and
26 the Sheriff had done everything they can to comply with his
27 orders at that particular time.
28

1 SENATOR PETRIS: Does the State Board of Corrections
2 have any money authority to help counties?

3 MR. KRANS: Just with the jail capital expenditure
4 fund as far as jail construction.

5 Depending on the bond issues that pass, the most
6 recent being Prop. 86, there has been approximately one-half
7 billion dollars which have been allocated for state jail
8 financing which the Board of Corrections does in fact
9 administer.

10 SENATOR PETRIS: You do the allocating; don't you?

11 MR. KRANS: Some of the allocating. The last couple
12 of bills, some of the bills themselves had actually carried the
13 allocation in the bill, and the Board just followed the
14 direction of the Legislature with those particular issues.

15 SENATOR PETRIS: I thought maybe one reason you want
16 to get on this Board is to help the counties get more jail
17 space.

18 MR. KRANS: Well, that would be a desired thing. I
19 think we just saw estimates that have been provided to the
20 Governor. In the next ten years, there's approximately -- a
21 need for approximately \$4 billion in order to construct jails
22 with the needs that will be existing within the State of
23 California for the next ten years.

24 SENATOR PETRIS: Well, obviously, as Senator Craven
25 points out, it's a problem not unique to this county.

26 In the Bay Area, one of the federal judges held the
27 whole Board of Supervisors in contempt, of Santa Clara County,
28

1 as I recall.

2 I think the voters ought to be held in contempt.
3 They're constantly moaning about soft-headed, wooly, mushy
4 judges who don't put anybody in jail, or tap them on the wrist
5 and give them 30 days for serious crimes, yet when the
6 opportunity comes up for the voter to provide money for jails,
7 they often say no. And then they blame it on the judges, and
8 they blame it on the Legislature, and they blame it on everybody
9 else.

10 It's too bad the judge didn't expand that to include
11 every voter who voted against jails in that jurisdiction. You
12 know, they scream for more and more jails, more and more prison
13 terms, I mean, longer sentences, put more people in jail, but
14 they don't provide the facilities.

15 You're just the caretaker. There's not much you can
16 do about that, I guess, in your capacity. In your prior
17 capacity, I mean.

18 MR. KRANS: That's right.

19 You mentioned previously the bill carried by Senator
20 Bergeson. That bill would allow a half-cent sales tax in our
21 county, which will be actually going to the voters on May the
22 14th. We've been working with several other agencies in trying
23 to bring the information to the voters of the county as to the
24 critical need we have for jail space in the County of Orange.
25 That bill will be brought to the voters and will be voted upon
26 on the 14th.

27 SENATOR PETRIS: Do you think that will pass?
28

1 MR. KRANS: The most recent poll we got, in fact just
2 over the weekend, conducted by the Los Angeles Times, indicates
3 a 55 percent favorable --

4 SENATOR PETRIS: That's not enough; is it?

5 MR. KRANS: It's enough.

6 SENATOR PETRIS: Oh, it's a sales tax.

7 MR. KRANS: It's a sales tax issue, a half-cent sales
8 tax.

9 SENATOR CRAVEN: Let the record show that Senator
10 Mello is now present.

11 SENATOR PETRIS: Thanks, Mr. Chairman.

12 SENATOR CRAVEN: Thank you, sir.

13 MR. COMISKEY: I think -- there are only two people
14 appointed on the Board of Corrections that deal with jails. And
15 I would think you ought to be able to get somebody on th Board
16 of Corrections who hasn't been in litigation for 20 years, and
17 who has not, over those 20 years, had their jail population over
18 the recommendation of he Board of Corrections.

19 I just think that puts a person in a seriously
20 compromising position, and it really makes the Board of
21 Corrections something of a joke.

22 SENATOR CRAVEN: Very well, thank you very much.

23 Anyone else who wishes to testify There appears to
24 be none.

25 What is your pleasure, gentlemen?

26 SENATOR BEVERLY: Move recommendation of approval of
27 the nomination.
28

1 SENATOR CRAVEN: Senator Beverly moves. Call the
2 roll.

3 SECRETARY WEBB: Senator Beverly.

4 SENATOR BEVERLY: Aye.

5 SECRETARY WEBB: Senator Mello.

6 SENATOR MELLO: Aye.

7 SECRETARY WEBB: Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Senator Craven.

10 SENATOR CRAVEN: Aye.

11 SECRETARY WEBB: Senator Roberti. Vote is four to
12 zero.

13 SENATOR CRAVEN: The vote is four to zero; you have
14 been approved.

15 Thank you very much for the testimony on the part of
16 both of the individuals.

17 [Thereupon the Senate Rules Committee
18 acted upon legislative agenda items.]

19 SENATOR CRAVEN: Mr. Chairman, we have the
20 confirmation of Mr. Nyland next.

21 CHAIRMAN ROBERTI: The next item on the agenda is the
22 confirmation of Harvey S. Nyland, Member of the Board of
23 Corrections.

24 Hello, Mr. Nyland. We'll ask you what we ask all the
25 Governor's appointees, and that is why you feel you're qualified
26 to assume this position.

27 MR. NYLAND: Mr. Chairman, I have a Bachelor's degree
28

1 and have some graduate school experience. I've spent 31 years
2 in law enforcement: 23 and a half years with the Monterey
3 County Sheriff's Department, in which I started as a Deputy
4 Sheriff and rose to the rank of Chief Deputy in Charge of
5 Corrections.

6 In 1980, I went into the Corrections Bureau and was
7 in charge of two facilities which housed 850 inmates, supervised
8 by 114 staff.

9 While with Monterey County, the medical program
10 became certified under the State of California, the California
11 Medical Association. We also started many alternatives to
12 incarceration within the facility to cut down the jail
13 population.

14 I took office as Sheriff of San Bernardino County in
15 January of 1987. Inherited a jail which was built in 1950 with
16 a rated capacity of 29, and with an average daily population of
17 about 75-80. We worked hard to do alternatives to incarceration
18 there.

19 The voters of San Bernardino County, in 1980 -- in
20 1990 and 1988, went to the voters for a half-cent sales tax
21 override. The first time they lost by 100 votes; the second
22 time they lost by 30 votes.

23 The County is now moving ahead with a 100-bed new
24 jail facility. We're in the design-development stage, and
25 hopefully we'll be breaking ground later this year with a
26 construction for one year.

27 The budget in the jail is currently around \$800,000,
28

1 and I am on the Jail Committee for the State Sheriffs'
2 Association, and also the California Peace Officers Association.

3 CHAIRMAN ROBERTI: Thank you very much, Mr. Nyland.

4 Is there any discussion or debate? Any questions of
5 Mr. Nyland?

6 Is there any opposition?

7 MR. COMISKEY: Good afternoon. I'm Paul Comiskey,
8 President of the Prisoners Rights Union.

9 I don't know Mr. Nyland. I know he's a graduate of
10 Santa Clara, and being a Jesuit priest, I think that's highly
11 favorable of him.

12 However, reading the report that was submitted to the
13 Legislature by the Board of Corrections, he does, as he states
14 himself, run one of the worst jails in California, a jail that's
15 built for 29 people that has a population of 75 in it.

16 In the terms of the compliance, they found that he
17 didn't have enough personnel in the jail, and that the prisoners
18 in that particular jail were not being given the minimum amount
19 of exercise, which is only three hours a week.

20 So, my question in terms of Mr. Nyland is the same I
21 had of Mr. Krans: are we so bereft of candidates for the Board
22 of Corrections that we have to find people who run such awful
23 jails to sit on the Board of Corrections, in spite of the fact
24 that it may or may not be their fault?

25 I think some of the things that were wrong with that
26 jail in San Bernardino County are not his fault. I think others
27 could be and would have to be attributed to poor management, at
28

1 least in terms of prisoners not getting enough exercise.

2 There are only two members on the Board of
3 Corrections who deal with jails. I think that they probably
4 have quite a large leadership role in terms of the other people
5 who would look to them for their expertise in jails. I think
6 that we ought to appoint people to the Board of Corrections who
7 run constitutional jails and jails that would conform to the
8 standards of the Board of Corrections.

9 If we don't do that, I would, one, ask why we spend
10 all the money that we spend establishing the Board of
11 Corrections and giving them the function of setting standards,
12 and giving them the other functions that they have.

13 So, I would say, if we cannot find people who run
14 jails that are in conformity with the Board of Corrections, and
15 conformity with law, then I think we ought to abolish the Board
16 of Corrections.

17 CHAIRMAN ROBERTI: Thank you.

18 Do you have a response to that?

19 MR. NYLAND: Yes, Mr. Chairman.

20 Mr. Comiskey, as far as the exercise is concerned,
21 we've changed our procedures, and now the inmates are getting
22 the exercised required by the Board of Corrections: three
23 hours per week.

24 The staffing problem is one that we face every year.
25 We go to the Board of Supervisors and we ask them for more
26 people. The Board turns us down.

27 Last year, we went to the Board and asked them for
28

1 three additional correctional officers plus a bailiff. By the
2 Government Code, I'm required to bailiff the Superior Court. I
3 had a bailiff who died. I wanted to replace him with another
4 person, and the Board wouldn't even give us someone to bailiff
5 the Superior Court, so we have to do that with other people.
6 And it's been a constant battle.

7 I wish that we had all the people that we wanted, but
8 the Board won't give them to me, and I'm kind of stuck that way.

9 We're going to the Board this year, asking them for
10 more. As you realize, everybody realizes what the budget
11 situation is this year, and the chances of getting this year
12 probably aren't that well.

13 The Board of Corrections has three people from the
14 Sheriffs instead of two: two sheriffs and one jail
15 administrator.

16 CHAIRMAN ROBERTI: Thank you.

17 Are there any other questions? Is there any other
18 opposition?

19 Thank you very much.

20 SENATOR BEVERLY: Mr. Chairman, I'd just like to
21 observe, Senator Mello had to leave to go to another committee.
22 He strongly supports the nomination.

23 In his place, instead, I'll move the approval of the
24 nomination.

25 CHAIRMAN ROBERTI: Senator Beverly moves approval.

26 In Monterey County, how many prisoners are there in
27 the facility?
28

1 MR. NYLAND: When I was there, sir, we had a maximum
2 of 800. Now there's over 1,000.

3 CHAIRMAN ROBERTI: What is the designated capacity?

4 MR. NYLAND: Rated capacity, I would think, around
5 600. It was over capacity also.

6 CHAIRMAN ROBERTI: And you did, on more than one
7 occasion, request --

8 MR. NYLAND: We requested for new personnel every
9 year, and we have not been successful with the Board of
10 Supervisors.

11 SENATOR PETRIS: How about expanded facilities?

12 MR. NYLAND: We're building -- the Board has been
13 turned down twice on sales tax measures. They're going ahead
14 with funding -- getting a loan, and going to build a new 100-bed
15 facility. We're in design development right now. Hope to put
16 it out to bid by July and be breaking ground by September, so
17 we'll take a year to complete it. So, hopefully in a year we'll
18 have a new facility.

19 SENATOR PETRIS: It went to a vote twice?

20 MR. NYLAND: Twice and was turned down, yes. The
21 second time by 30 votes.

22 SENATOR PETRIS: Why don't you just turn them loose?
23 If the people out there don't even want to provide the money for
24 a prison, you know, a county jail, why hold them? Let them
25 loose on the populace. Maybe they'll get the message. What
26 kind of nonsense is that?

27 What was the vote? Was it overwhelming, or did they
28

1 just barely miss it?

2 MR. NYLAND: Thirty votes we lost by.

3 SENATOR PETRIS: Thirty votes?

4 MR. NYLAND: Yes, so we're getting better.

5 Hopefully, if we try it again, once we start construction, the
6 Board wants to go back again a third time, and hopefully it'll
7 pass this time.

8 SENATOR PETRIS: Might be quicker if you'd just turn
9 them loose. They can go plunder the population, which will lose
10 a lot more money than what it'll cost in the little additional
11 tax to build a prison. I don't understand that. That is really
12 outrageous.

13 CHAIRMAN ROBERTI: There is a motion before is.
14 Secretary will call the roll.

15 SENATOR PETRIS: I move the County of Monterey people
16 be assessed --

17 [Laughter.]

18 SENATOR PETRIS: -- the appropriate amount to fill
19 the gaps.

20 CHAIRMAN ROBERTI: Secretary, call the roll.

21 SECRETARY WEBB: Senator Beverly.

22 SENATOR BEVERLY: Aye.

23 SECRETARY WEBB: Senator Mello. Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB: Senator Roberti.
28

1 CHAIRMAN ROBERTI: Aye.

2 The vote is four to zero.

3 SENATOR BEVERLY: Can we leave the roll open?

4 CHAIRMAN ROBERTI: Senator Beverly moves that the
5 roll remain open, but there are sufficient votes.

6 MR. NYLAND: Thank you very much, sir.

7 CHAIRMAN ROBERTI: Thank you very much.

8 The next appointment is that of Blaine E. Pettitt,
9 Member of the Board of Directors of Hastings College of the Law.

10 How are you? We'll ask you also why you feel you're
11 qualified to assume this position.

12 MR. PETTITT: Well, I started my career as a graduate
13 of Hastings College of the Law. I've had a lifetime interest in
14 the College, naturally, because of that.

15 I've had a long legal career and judicial career. I
16 think that I can bring maturity, certainly in years; I hope more
17 than that. I believe I can exercise proper judgment and be
18 fair in all of the decisions I make.

19 I enjoy what I've experienced so far, and I've been
20 acting since last fall. I certainly enjoy the position. I'm
21 very proud to be there. I think it's an honor. I didn't seek
22 the appointment, and I'm proud of that fact, but I'm very happy
23 that it has happened to me, at least up to this point, and I
24 simply will ask for your favorable consideration and be glad to
25 answer any questions you might have.

26 CHAIRMAN ROBERTI: Wasn't there a problem last year,
27 or two years ago, about an expansion project at Hastings?
28

1 MR. PETTITT: Yes.

2 CHAIRMAN ROBERTI: What is the status of that? It
3 was rather controversial; wasn't it?

4 MR. PETTITT: It was and it still is.

5 I find it very unfortunate that we do have to spend
6 as much time as we do spend on things that really don't have to
7 do with legal education. I'm hoping that some of that can be
8 eliminated, and I'm certainly going to use all of my efforts to
9 see if it can be.

10 I think there were some decisions made some years ago
11 that were the wrong ones, and they've resulted in a lot of
12 strife and turmoil. It's unfortunate.

13 CHAIRMAN ROBERTI: We have here that there was a
14 report in the Sacramento Union that the school stole some of the
15 student trust money, quote:

16 "to buy up some low-cost housing in
17 San Francisco, adding to the
18 homeless problem, and now apparently
19 hopes to make a bundle reselling
20 that property for adjoining court
21 facilities."

22 MR. PETTITT: Yes, there was money used from the
23 student scholarship funds that certainly shouldn't have been
24 used. And there was property purchased.

25 Now the school has that property. It's
26 controversial. After the earthquake, there was one building
27 that had to be demolished. As I understand it, there was
28

1 some discretion in deciding to demolish two other residential
2 buildings, but they were thought to be uneconomic as far as
3 units are concerned.

4 Now there's trouble with the tenants council and
5 with the tenderloin committees. It's just unfortunate, and I
6 find that everybody on the Board is striving diligently to
7 try to correct these situations. The Dean feels that way,
8 the General Counsel. But it's there.

9 And Hastings, because of the use of this
10 scholarship money, had to return to a number of students
11 what, in the aggregate, was a considerable sum of money.
12 They had to borrow to do it. Now they have a debt which has
13 to be serviced, and they can't service it if this property
14 isn't utilized.

15 The question is, utilizing the property in a way
16 that will please as many as possible. But it does have to be
17 utilized, or eventually the school will reach a point of
18 almost insolvency in servicing this debt.

19 CHAIRMAN ROBERTI: Were you on the Board when the
20 decision was made to purchase the property?

21 MR. PETTITT: Oh, no.

22 CHAIRMAN ROBERTI: You weren't?

23 MR. PETTITT: No, that was several years ago.

24 CHAIRMAN ROBERTI: You've been on the Board
25 subsequently?

26 MR. PETTITT: I was appointed last September. I've
27 only attended two meetings.
28

1 CHAIRMAN ROBERTI: I have one other question.
2 Evidently U.C. has a parental leave policy that extends to
3 the fathers and parents of adopted children. Hastings hasn't
4 adopted any parental leave.

5 Do you know anything about that?

6 MR. PETTITT: It hasn't been mentioned. I don't
7 know whether there's been any movement to adopt such a
8 policy.

9 I know that that policy is being adopted all over
10 the country. I wouldn't be surprised but what it would be
11 adopted at Hastings, if there'd been any requests for it.

12 I haven't heard of anyone requesting that, but I
13 wouldn't be opposed to it.

14 CHAIRMAN ROBERTI: You're not opposed to a parental
15 leave policy?

16 MR. PETTITT: No.

17 CHAIRMAN ROBERTI: There would be a parental leave
18 policy, without getting into specifics, that you could
19 support?

20 MR. PETTITT: Yes. I would want to know the
21 details of the policy before I would commit myself, but in
22 general, I have no opposition to it.

23 CHAIRMAN ROBERTI: Senator Craven.

24 CHAIRMAN ROBERTI: Just as a matter of information,
25 are all of the members of the Board at Hastings, Hastings
26 alumni?

27 MR. PETTITT: There is one who is not. He's a
28

graduate of Boalt. That's the son of the former President of the University of California, Sproul, John Sproul. He was a Boalt graduate. All the others are Hastings graduates.

SENATOR CRAVEN: Thank you, sir.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: I went into the maternal leave question last time, and I learned that your policy at Hastings is better than we have in the Senate, which I relayed to my colleagues at the time.

I have a question on due process with respect to faculty grievance. I understand that there isn't any procedure established, comparable, say, to U.C., the U.C. system as a whole, which seems to me to be a grievous omission. There's no established grievance procedure. That's the complaint we get.

Now, that's for the faculty's right to appeal decisions affecting faculty and administrative proceedings.

Has any of that been brought to your attention in the short time you've been on the Board?

MR. PETTITT: No, it hasn't.

I might mention, the General Counsel of Hastings is here that could probably address that issue, but it hasn't been mentioned. Hasn't come to my attention at all.

SENATOR PETRIS: Maybe she could help us.

CHAIRMAN ROBERTI: Yes, please come forward.

SENATOR PETRIS: I raise the question because, as a politician, I am very reluctant to interfere with the academy

1 at any level of higher education. One of the areas where
2 I've always made an exception is when it comes to my
3 attention that a faculty member, or any employee -- I went to
4 bat for some janitors one time at U.C. Berkeley, a long time
5 ago -- when any employee has been denied due process inn some
6 internal resolution of a problem. Then I think I'm justified
7 in going in.

8 And if it's true that there's no procedure
9 established, it seems to me there ought to be. Is that true?

10 MS. KHACHADOUR: My name is Angele Khachadour. I'm
11 General Counsel of Hastings School.

12 And if you so understand, Senator Petris, that's
13 not the case. In fact, what the Board did was to adopt as a
14 general principle all of the procedures in place at the
15 University of California, unless a separate or different
16 procedure is adopted at Hastings.

17 So, with regard to the faculty, the faculty itself
18 adopted the Articles of Governance last year. It designed it
19 and adopted it, and it was submitted to the Board purely for
20 information.

21 With regard to a tenured faculty member, should in
22 fact there be a reason to wish to take some action against
23 such an individual, then it would have to follow the same
24 procedure as is mandated in the rules of the University
25 Senate, of the Academic Senate.

26 So, we followed exactly the same rules. So, I am
27 very troubled if, somehow, you were given the impression like
28

1 that.

2 SENATOR PETRIS: So am I.

3 MS. KHACHADOUR: That's not the case.

4 SENATOR PETRIS: I'll have to go back to my source
5 and find out what the source, the ultimate source, of the
6 information is.

7 MS. KHACHADOUR: The Articles of Governance that
8 the faculty has, which governs its own activities, they
9 adopted it just last year. In fact, they had been relying
10 principally on the Academic Senate's Articles of Governance.
11 Their being a much smaller school, there're a lot fewer types
12 of tenured professor positions, they decided to adopt their
13 own. It was drafted and designed entirely by the faculty,
14 with absolutely no influence at all by the Board of
15 Directors.

16 SENATOR PETRIS: That went in last year?

17 MS. KHACHADOUR: Yes.

18 SENATOR PETRIS: It's in place now?

19 MS. KHACHADOUR: Yes.

20 And with regard to the question from Senator
21 Roberti on leave in the event of an adopted child, we follow
22 the same rule, exactly the same rule. And it is true, as
23 Senator Petris pointed out, that our parental leave and our
24 maternity leave is a lot more generous than yours for your
25 employees. I'm glad that he remembered that.

26 SENATOR PETRIS: I'd like to get on another subject
27 while you're here.
28

1 Under the new statute that we enacted, trying to
2 solve the problem raised by the Knox bill, what is the
3 current procedure now for appointments? Is it a
4 recommendation?

5 MS. KHACHADOUR: Well, as you recall, the bill was
6 vetoed by former Governor Deukmejian.

7 SENATOR PETRIS: It was vetoed, that's right.

8 MS. KHACHADOUR: We hope to reintroduce it again to
9 resolve that constitutional issue.

10 SENATOR PETRIS: So what's the current procedure?

11 MS. KHACHADOUR: We are proceeding exactly under
12 the old law, which is the Knox law, 1980 enactment. The
13 Governor appoints and the Senate Rules Committee confirms.

14 SENATOR PETRIS: Does the Governor base that on
15 recommendations from the Board, or just on his own?

16 MS. KHACHADOUR: No, the Board has had no input in
17 the selection and nomination process whatsoever.

18 SENATOR PETRIS: Then I need to talk to Judge
19 Pettitt.

20 We've been sensitive on the Committee, especially
21 during the Deukmejian years. In some areas he was, in our
22 judgment, excellent in offering opportunities to minorities,
23 to women and other kinds of minorities. But in some areas,
24 that policy didn't apply.

25 One of them was Cal State Board of Trustees. It
26 got so bad that the Chairman, on behalf of a majority of us,
27 served notice that we would simply not approve any more
28

1 appointments to the Cal State Board if they didn't come from
2 the minority part of our community, because they were so
3 lacking.

4 We find Hastings has the same problem. They're all
5 male, except for one, Caucasian, alumni of the University.

6 Now, for the biggest public law school in the
7 country, that's a very narrow base. We didn't serve notice
8 on the Governor, so I'm not aiming this at you, but you just
9 happen to be the next one. But to the extent that you have
10 any input -- I guess you don't. The Governor just does it on
11 his own -- it would seem to me, though, that the Board itself
12 ought to take notice of that fact and just kind of pass the
13 word on to the Governor. It would be nice.

14 There are probably some women alumni now, if you
15 have to stick to the alumni. I don't know why that's
16 necessary.

17 I think a lot of the schools benefit by having
18 trustees who come from another school. That cross
19 fertilization helps at Stanford and a lot of other places. I
20 don't know of any school that is limited, in our area, to its
21 own alumni as the base for persons to serve on the governing
22 body.

23 I guess I'll have to talk to the Governor directly,
24 but he didn't appoint me to anything. Since he's appointed
25 you, I thought maybe next time you talked to him, you might
26 relay the grievance.

27 Now, this is early in his term. We complained to
28

1 Governor Deukmejian many times, but nothing happened.

2 It just doesn't seem to fit in with the current
3 realities of life to narrow that base so much. As good as
4 the individuals are -- they've all been approved; they've all
5 had a distinguished career in the law, and they're making,
6 I'm certain, a good contribution -- but it certainly ought to
7 be a much more representative body, it seems to me.

8 Now, that's not your function, so I'm not going to
9 put you on the spot. You're the only channel right now for
10 expressing that. It should get back to the Board as well as
11 the Governor.

12 MR. PETTITT: I certainly have no quarrel with it.

13 There is a vacancy on the Board now, and the
14 correction could start today.

15 SENATOR PETRIS: I'd better get a letter to the
16 Governor right away.

17 CHAIRMAN ROBERTI: I think we can all join with the
18 letter so we let the Governor know what we're looking at in
19 confirmations.

20 MS. KHACHADOUR: Senator Petris, if we succeed this
21 year in increasing the Board, too, there will be more
22 openings. There will be an opportunity for a student
23 director, an opportunity for a faculty director. We
24 certainly are very sensitive to the issue you have raised.

25 Governor Deukmejian appointed one woman to this
26 board only.

27 With regard to appointing nongraduates of the
28

1 College, because Hastings is a very small law school,
2 individuals interested in serving on the Board have been
3 primarily individuals who have graduated from there.

4 SENATOR PETRIS: I understand that.

5 So, it's a little harder to attract a businessman
6 or businesswoman, or someone not affiliated with the College.

7 SENATOR PETRIS: I would recommend tackling the
8 other problem first, and then we'll see about the alumni.

9 MS. KHACHADOUR: I'm sure we can tackle that by
10 simply taking -- the Board, having it review the list of
11 prestigious female alumni. We have quite a few
12 extraordinarily successful, capable graduates, and we have
13 several judges who might be interested as well who are women
14 and minority. We have one director, as you know, who is from
15 -- who is Mexican-American, Ralph Abascal, who was a
16 graduate.

17 But it certainly is not a good mix, so we hope that
18 will happen.

19 Thank you.

20 CHAIRMAN ROBERTI: Thank you both.

21 Any further questions? Is there any opposition?

22 MR. COUTIN: Yes. My name is Gary Michael Coutin.
23 I've appeared before this Committee before on this particular
24 matter. I'm an alumni, among other things.

25 This is my third appearance before the Committee to
26 oppose yet another appointment of another white male alumni
27 to the Board of Directors of Hastings College of the Law.
28

1 This lack of diversity proves that Hastings College
2 of the Law always has been and continues to be a
3 self-perpetuating private trust which, in effect, is owned
4 and operated by a small clique of alumni who choose their own
5 successors from other alumni who share the same mind-set and
6 interests as the existing Board.

7 The probability of choosing all alumni to the Board
8 at random from the State of California runs at large -- runs
9 in the realm of quadrillions. So, this is not a random
10 operation, a random chance. This is a deliberate policy,
11 spoken or unspoken. It's the operative principle at Hastings
12 College.

13 The confirmation of Judge Pettitt to the Board
14 raises another question, the same question as did the
15 appointment of Judge Marvin Baxter to the Board, whom, I
16 understand, that Judge Pettitt now replaces. And that is,
17 does this appointment violate the rule, constitutional rule,
18 prohibiting judges from holding a second public office? That
19 is Article VI, Section 17.

20 The third, the power of the Governor to appoint and
21 the Senate to confirm Directors to the Board of Directors of
22 Hastings College of the Law came into being by virtue of a
23 statute now universally recognized as being unconstitutional.
24 Therefore, said power does not exist.

25 Among authorities for the fact that the statute is
26 unconstitutional, I understand there's public admissions by
27 the Dean of the school, by General Counsel of Hastings
28

1 College. Legislative Counsel has issued three or four
2 memorandums all to the effect that the Knox bill is
3 unconstitutional.

4 So, I want to make it clear that the act of
5 confirming -- you have no power to confirm.

6 I'll quote a case that the Supreme Court of the
7 United States said about a statute which is unconstitutional:

8 "It is not law; it confers no
9 rights, it imposes no duties; it
10 affords no protection and creates no
11 office; it is, in legal
12 contemplation, as inoperative as
13 though it had never been passed."

14 That's Norton vs. Shelby County. That case was decided in
15 1885.

16 The Supreme Court of California agrees with this
17 and says, in a case from Pacific Indemnity case, said:

18 "If the statute is offensive to the
19 Constitution it is 'no law at all'."

20 Therefore, there is no law which empowers you to make this
21 appointment today.

22 The last time I was here, the opinion of
23 Legislative Counsel was that the act is unconstitutional, but
24 what he advised this body to do is, he said, to quote the
25 newspaper article:

26 "Your duty is to continue
27 administering the law as it is on
28

1 the books today until an appellate
2 court strikes it down."

3 That is legally incorrect.

4 Now, what I think he was talking about was Article
5 III, Section 3.5 of the Constitution of the State of
6 California, which applies to administrative agencies. This
7 body, the Senate Rules Committee, and the individual Members
8 of this Committee, are not administrative agencies. You are
9 a coordinate branch of government.

10 You have the right and the duty to follow the
11 Constitution independently of the court. You cannot wait for
12 a court to tell you that this bill in particular is
13 unconstitutional, especially since the Supreme Court stated,
14 in 1886, that statutes of this kind are unconstitutional. It
15 specifically said that statutes which change, alter, the
16 Board of Directors of Hastings College of the Law are
17 unconstitutional. That was the Hastings vs. Hastings case,
18 1886.

19 So, the question is, does this administrative
20 restriction as it applies to administrative agencies, does it
21 apply to this legislative body? And the Supreme Court has
22 said, in the Reese vs. Kizer case, that it does not apply to
23 the Legislature. Quote:

24 "Its language, however, cannot be
25 reasonably construed to place a
26 restriction on the authority of the
27 Legislature to limit the scope of
28

1 its own enactments."

2 Talking about the legislative intent of the Article III,
3 Section 3.5:

4 "Nothing in the material submitted
5 to the voters suggest that the
6 amendment was intended to act as a
7 restriction on the legislative
8 powers. Rather, the proponents of
9 the measure argued that it would
10 'insure that appointed officials do
11 not refuse to carry out their duties
12 by usurping the authority of the
13 Legislature and the Courts.'"

14 Now, the Attorney General has held that an
15 administrative agency, quote, "is a governmental body, other
16 than a court or the legislature."

17 So, when that Legislative Counsel told you to
18 ignore the constitutional question and to continue to confirm
19 Directors to the Board of Directors of Hastings College of
20 the Law, knowing that it's unconstitutional, to wait for a
21 court to rule otherwise, Legislative Counsel was giving you
22 incorrect advice.

23 CHAIRMAN ROBERTI: Any questions or observations on
24 that?

25 SENATOR CRAVEN: We find ourselves, as I recall, in
26 the same basic situation that we were in once before when
27 this gentleman testified, and he supplied us at that time
28

1 with a tremendous amount of material which, as I recall,
2 Senator Petris researched and was acting upon.

3 Is that not right, Nick?

4 SENATOR PETRIS: I wasn't able to do the research
5 to the extent I wanted, but I read some material on it.

6 I thought he raised a good point at that time.
7 That's why I asked that it go over. And I intend to
8 continue checking that and continue my discussions. My next
9 step is to talk to Bion Gregory about the overall thing.

10 I said at the time that it seemed to me it ought to
11 be clarified once and for all by a lawsuit, or what do we
12 call it?

13 MR. COUTIN: An action for declaratory relief.

14 SENATOR PETRIS: Yes, and indicated to him since
15 the willingness to be the person who waives the immunity,
16 because he has filed some actions from time to time to compel
17 the Legislature to do something or refrain from doing. So,
18 I'm still willing to do it.

19 I thought that had been taken care of, as I told
20 you earlier today. I intend to see our Counsel to clear up
21 whatever obstacle remains to that so that it can proceed.

22 In the meantime, I did vote for the last one that
23 was under that kind of attack. He wasn't, but we were,
24 because of your position.

25 It's just an update.

26 I have a lot of sympathy for what Mr. Coutin says.
27 If there's any doubt about the constitutionality of our act,
28

1 we ought to eliminate the doubt. We ought to clear it up. I
2 understand that.

3 MR. COUTIN: That's all I ask.

4 The other thing about the bill that was introduced
5 in 1990, to somehow reconstitutionalize the Board, and which
6 General Counsel has suggested today would be reintroduced at
7 this session, the bill is unconstitutional because it faces
8 -- it's the same bill. It comes from the same source. It's
9 the person introducing another piece of legislation, which is
10 also unconstitutional. That is, it purports to change the
11 Board of Directors of Hastings College of the Law by a virtue
12 of a legislative enactment.

13 You cannot do that because it's in the University
14 of California, because it's a private trust, and it's
15 protected under the Dartmouth College principles. Therefore,
16 it's not even clear, and General Counsel for Hastings has
17 said so, it's not even clear that the people of the State of
18 California, by constitutional amendment, can alter the Board
19 of Directors of Hastings College. It was a charter which is
20 older than the Constitution itself, and that's what was the
21 Dartmouth College case that went to the Supreme Court of the
22 United States in 1819.

23 So, it's not clear that anybody can alter this
24 Board of Directors. And what John Vasconcellos said when he
25 faced this problem in 1979 about the lack of diversity, he
26 said maybe we should just abolish the Board of Directors and
27 start all over again. Well, you can't do that.
28

1 All you have to do is not fund the Hastings Trust
2 for one year, two years in succession, and the trust is
3 terminated. Then the whole property of the College falls
4 into the hands of the Regents of the University. That would
5 be the end of it.

6 SENATOR PETRIS: Thank you.

7 CHAIRMAN ROBERTI: Any further questions? Senator
8 Petris.

9 SENATOR PETRIS: I have a problem with the judge.
10 He's not a judge now. He's retired, so the conflict thing --
11 I think you assumed he's an acting judge, a sitting judge.

12 MR. COUTIN: I believed so because I saw his name
13 was Judge.

14 SENATOR PETRIS: Well, you know how it is. We call
15 Senators that forever after, and we do that with judges, too.

16 But I have a different problem. I want to ask if I
17 should disqualify myself. I don't think I have to.

18 My prior experience with Judge Pettitt was in a
19 case I tried in his court a long time ago. It went about six
20 or seven weeks. Very, very vigorously contested, and the
21 decision came down on my side on all points, smashing.

22 I wonder if that precludes me from being objective
23 in casting a vote. I'd like very much to support him.

24 CHAIRMAN ROBERTI: The statute of limitations has
25 probably expired.

26 SENATOR PETRIS: Thank you.

27 MR. PETTITT: I might say, that was the most
28

1 interesting case I ever presided over. There's no question
2 about it. I've said that every time I've been asked, and in
3 interviews for the news media, have referred to that case as
4 the most interesting.

5 And I'll say, too, that it was well tried by the
6 side that won.

7 [Laughter.]

8 CHAIRMAN ROBERTI: We're sure of that.

9 SENATOR BEVERLY: Was there an appeal?

10 MR. PETTITT: Was there an appeal, Senator?

11 SENATOR PETRIS: No.

12 MR. PETTITT: There wasn't. I couldn't remember.

13 CHAIRMAN ROBERTI: Any further discussion or
14 debate? Any further opposition?

15 Do I hear a motion?

16 SENATOR CRAVEN: Move.

17 CHAIRMAN ROBERTI: Senator Craven moves. Secretary
18 will call the roll.

19 SECRETARY WEBB: Senator Beverly.

20 SENATOR BEVERLY: Aye.

21 SECRETARY WEBB: Senator Mello.

22 SENATOR MELLO: Aye.

23 SECRETARY WEBB: Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB: Senator Roberti.
28

1 CHAIRMAN ROBERTI: Aye.

2 The vote is five to zero; confirmation is
3 recommended to the Floor.

4 MR. PETTITT: I want to thank all of you very
5 much.

6 CHAIRMAN ROBERTI: The roll is open for Mr. Nyland.
7 Senator Craven moves that the roll be lifted. Secretary will
8 call the Roll.

9 SECRETARY WEBB: Senator Mello.

10 SENATOR MELLO: Aye.

11 CHAIRMAN ROBERTI: The vote is five to nothing;
12 confirmation of Mr. Nyland is recommended to the Floor.

13 [Thereupon this portion of the
14 Senate Rules Committee hearing
15 was terminated at approximately
16 3:10 P.M.]

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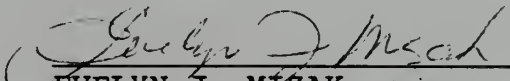
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, 1991.


EVELYN J. MIZAK
Shorthand Reporter

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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



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SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

TERRANCE W. FLANIGAN, Member
Board of Trustees
California State University

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
TERRANCE W. FLANIGAN, Member Trustees of the California State University	1
Motion	2
Committee Action	3
Termination of Proceedings	3
Certificate of Reporter	4

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Ms. Filante is gone, but Terrance W. Flanigan is here.

Dr. Filante will be rescheduled for next week or the week after, at her convenience.

Mr. Flanigan, Member of the Trustees of the California State University, we will ask you why you feel you're qualified to assume this position, because that's what we ask all of the appointees.

MR. FLANIGAN: Thank you, Mr. Chairman.

I'm here today, as I think you understand, in an unusual role for me. I've been before all of you Senators at one time or the other, either representing the State Bar or the California Manufacturers Association.

Today I'm representing an individual over which, compared to those other entities, I feel as though I'm exercising a greater degree of client control, and that is myself. And I'm pleased to be here to discuss the issue with you.

I am the product of the California -- a product of the California State University system. My three brothers also are products of the same institution, with five years separating the four of us. We all attended San Diego State -- then San Diego State College, now San Diego State University, which provided us with, I believe, an accessible, affordable and quality education.

1 In 1968-1969, I was fortunate enough to be elected
2 Student Body President of San Diego State, and I succeeded the
3 previous Student Body President, a guy named Jack Flanigan, who
4 is my older brother.

5 You may remember, I think, as all of us do, that the
6 late '60s were a time of difficulty and yet of great interest, I
7 think, on campuses throughout the United States. And I think
8 the experience, both educationally and extracurricularly,
9 created the foundation which is really the basis for my career
10 in law and in governmental affairs.

11 I was honored last year to be appointed by Governor
12 Deukmejian to the Trustees, to a term that expired in March of
13 this year, and then once again appointed by Governor Wilson.
14 And that, to be able to now serve the institution from which I
15 have benefitted these so many years, and I'm here today seeking
16 your and the rest of the Senators' approval to continue that
17 service.

18 CHAIRMAN ROBERTI: Thank you very much.

19 Any questions?

20 SENATOR CRAVEN: Move Mr. Flanigan's confirmation.

21 CHAIRMAN ROBERTI: I think you're going to get off
22 easy, Mr. Flanigan.

23 Senator Craven moves Mr. Flanigan's confirmation be
24 recommended to the Floor as Trustee of the CSU system.

25 Any opposition in the audience?

26 Secretary will call the roll.

27 SECRETARY WEBB: Senator Beverly.
28

1 SENATOR BEVERLY: Aye.

2 SECRETARY WEBB: Senator Mello. Senator Petris.

3 Senator Craven.

4 SENATOR CRAVEN: Aye.

5 SECRETARY WEBB: Senator Roberti.

6 CHAIRMAN ROBERTI: Aye.

7 The vote is three to zero; the confirmation is
8 recommended to the Floor.

9 Congratulations.

10 MR. FLANIGAN: Thank you, Mr. Chairman.

11 CHAIRMAN ROBERTI: We look forward to working with
12 you on this.

13 [Thereupon this portion of the
14 Senate Rules Committee hearing
15 was terminated at approximately
16 3:50 P.M.]

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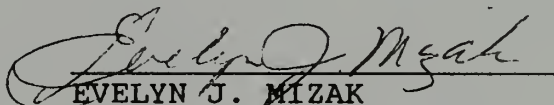
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WILLIAM R. MAZZA, Member
Board of Directors
California Housing Finance Agency

INDEXPage

Proceedings

1

Governor's Appointees:WILLIAM R. MAZZA, Member
Board of Directors

California Housing Finance Agency

1

Questions by SENATOR PETRIS re:

Agency Efforts in Low-income Housing

2

Geographical Disparity of CHFA Projects

5

Gender Gap Disparity

7

Priorities and Objectives for Coming Year

8

Motion

9

Committee Action

10

Termination of Proceedings

10

Certificate of Reporter

11

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

SENATOR CRAVEN: Next we have a Governor's Appointee appearing today, and I will take the pleasure of introducing William R. Mazza, Member of the Board of Directors of the California Housing Finance Agency.

Good afternoon, sir. If you will be seated and explain to us why you feel you're qualified for this important position.

MR. MAZZA: Good afternoon Senators and Chairman.

I don't have any particular opening statements, other than the fact of a little background on myself.

I'm a builder, primarily homes, and a developer here in the Sacramento area. I've been here approximately 30 years. I've been directly involved with the California Housing Finance Agency since its inception, both as a participant in using funds for housing projects and being a participant in their Industry Relations Committee for a number of years.

My primary activity in the housing field has been in the -- mostly in the affordable range. I'm a firm believer in the program, its goals. I think it's pretty evident to everyone that, with the current situation on the national level, that we're going to need additional efforts in particular in California because of our situation and costs, and CHFA, in reality, may be our only avenue at this point.

Other than that, I'm happy to answer any questions you may have.

1 CHAIRMAN ROBERTI: Senator Petris.

2 SENATOR PETRIS: Yes, I have some questions
3 reflecting my long-range interest in housing for the lower
4 income level of our people in California.

5 Over the years, as a matter of fact, since the very
6 first year that CHFA was created, a bill that I worked on pretty
7 hard -- and I had a separate bill that was merged into Senator
8 Zenovitch's bill; there were three or four who worked on it --
9 the very first year, when Jerry Brown was Governor, they came
10 under fire for concentrating too much on middle and upper as
11 opposed -- and single-family dwellings -- as opposed to the
12 multi-family and the lower income.

13 Now I see that the percentage -- well, I don't have
14 the percentage on that. I have a percentage on the geographical
15 differences. Here it is.

16 On a report we got last year from the Legislative
17 Analyst, undoubtedly before you went on it -- how long have you
18 been on it?

19 MR. MAZZA: I came on in September.

20 SENATOR PETRIS: Well, that report was in March, it
21 was way before your time.

22 But what it says is that out of all the money that
23 the Agency has, which is supposed to devote its principle, not
24 all of them but principle efforts, to low-income housing, only
25 11 percent of the beneficiaries who've been in this program are
26 in the low or very low income categories as defined by the
27 statute. Which means that 89 percent are in moderate and above
28

1 moderate.

2 Now, in the past, when we questioned people on this,
3 they say, well, it's easier to build a single-family dwelling.
4 The financing and everything else is easier. It's much more
5 complicated when you have large numbers of units, and so forth.

6 I would think by now we could overcome that. Can you
7 comment on that?

8 MR. MAZZA: I tend to agree with your last statement,
9 that we probably are at the point we we can overcome that.

10 I can't speak to -- other than as a participant in
11 the past, I would say that the direction of the activities of
12 the Agency, from my participation in it, I would agree has been
13 primarily in the single-family area.

14 But one of the reasons for that has been that, up
15 until recent times, there have been competing programs from the
16 -- particularly from the federal level on the low and very low
17 income housing projects, and in particular the multi-family.

18 As that has begun to -- and because of that, I think,
19 the development community and builders have tended to go to
20 those programs in lieu of the programs that CHFA offered,
21 because CHFA, as my recollection, did offer and pursue sponsors
22 to utilize their programs that dealt more with the lower income
23 users. At that time, I think CHFA was in direct competition
24 with those federal programs that it seemed most developers were
25 prone to use.

26 As that has begun to diminish, and it is diminishing,
27 since I've been on the Board, at every meeting I've attended, 50
28

1 percent of our time has been spent -- over 50 percent of the
2 Board meetings that I've been to have been spent -- dealing with
3 multi-family projects. And from what indication I have from
4 staff people I've talked to, this is really a relatively new
5 phenomenon for the Agency.

6 So that, I think at this point you're going to begin
7 to see more of the activity in the areas of the multi-family,
8 which is the beginning of dealing with the low and very low
9 incomes

10 SENATOR PETRIS: Do you support that direction?

11 MR. MAZZA: Yes, I do.

12 SENATOR PETRIS: Has it resulted yet in anything
13 concrete you can point to of any particular projects that's been
14 lined up?

15 MR. MAZZA: We are currently -- we currently have
16 approved -- I can't say that we funded them -- but they are
17 approved at the Board level as of March, \$35 million worth of
18 projects, a total of 1171 units for approval, of which 420 of
19 those units are for very low income participants. So that 420
20 of those units will be rented at the 50 percent of median income
21 level as far as the tenants are concerned.

22 I don't -- these projects have all -- were in process
23 prior to my coming on. I did vote on the majority of them in
24 terms of the final approval at the Board level.

25 SENATOR PETRIS: Are you saying that you see this
26 trend increasing in the future?

27 MR. MAZZA: Yes, I do. And one of the major reasons
28

1 is, in addition to what I spoke to about the deletion of the
2 federal participation in these areas -- I don't want to say
3 deletion. I think what's happening is that they are reducing
4 their participation. In addition to that, and in particular in
5 those areas that are high cost areas, these are the kinds of
6 projects in terms of new construction that will probably get
7 built.

8 And secondly, California has about 100 and -- I'm
9 estimating the number, but it's up around 160,000 units that are
10 part of the old Section 236 subsidy programs that HUD had issued
11 back in the late '60s and early '70s. These projects will all
12 be coming up for renegotiating contracts, or selling, whatever.
13 The Congress instituted a law about two years ago freezing all
14 of those units in their current status until they came up with a
15 way to try and maintain the units as affordable housing stock.

16 I think that probably CHFA's going to have a major
17 role in the refinancing, whether it be in the form of a
18 purchase, or whatever other program the feds may come up with,
19 to maintain those units, and in addition, maybe take the units
20 over and do a little bit of rehabilitation type activity.

21 So, in those areas alone, I see CHFA's role to be
22 pretty substantial, both in the new construction and in the
23 maintaining of those units.

24 SENATOR PETRIS: Senator Mello has always been
25 concerned about a geographical disparity. Since he isn't here,
26 I'd like to do that for him.

27 The figures show that in the Valley, Sacramento and
28

1 Fresno in particular, from 1983-89, 25 percent of all the loans
2 went to those two areas.

3 MR. MAZZA: That's correct.

4 SENATOR PETRIS: Whereas, for the Counties of L.A.
5 and Alameda, which happens to be mine, they got less than 11
6 percent.

7 Is that because of higher costs in the urban area, or
8 is that a greater need in the Valley? Senator Mello seemed to
9 think that somebody had a lot more influence who came from
10 there, which happens all the time; we understand that.

11 MR. MAZZA: No, I don't think that was the reason.

12 I think the reason is really kind of two-fold. One
13 of them that I think you spoke to, both of them, in that there's
14 plenty of need there as well as in the high cost areas.

15 I think the program's parameters from the standpoint
16 of those people that could qualify -- and keep in mind that in
17 terms of for sale housing, the federal legislation really only
18 deals with a very narrow band of buyers in terms of the for sale
19 units, and that band affects both the price of the unit as well
20 as the income of the participant.

21 During that period of time, there was a lot of effort
22 on the part of the underwriting agencies for CHFA to steer away
23 from the kinds of units that would qualify in the higher cost
24 areas, which were primarily the condo units. And at one point,
25 I think, CHFA -- and I wasn't on the Board -- but I think at one
26 point, there was a lot of discussion about trying too keep the
27 number of condo units in the program at a minimum.
28

1 Since that time, there's a been a change on the
2 Board, prior to my coming on, to begin to accept the fact that
3 there had to be a way to penetrate those higher cost areas,
4 which has been the direction, at least my experience over the
5 last year or so, and the way is to expand the use of the condo
6 for sale programs, which is being done.

7 Other than that, I think the reason for the high use
8 within the valleys is that the program's parameters under the
9 federal law, in terms of the limit of income and the limit on
10 the sales price, just happened to fit in the valleys. The
11 valleys currently are experiencing the same things as the high
12 cost areas in that they're becoming high cost areas.

13 So, there's -- the Board's position, as I understand
14 it, is to work on our -- and being relatively new, I don't know
15 all the nuances or details, but I know that the effort is to
16 distribute the allocations as much as possible on population
17 bases. Since they've overcome this idea of the condos being a
18 stigma or a problem, I think you just see increases in those
19 areas that historically haven't had larger numbers. That's
20 where the people are.

21 SENATOR PETRIS: There's one other area of
22 disparity, and it's the gender gap. Among single parents with
23 children, the overwhelming majority is single women with
24 children. They make up something like 66 percent of poor
25 families who need to rent, but they get about 38 percent of the
26 income that the others do, so they're in greater need.

27 The other category is among the elderly. Among the
28

1 elderly poor, 80 percent are women. They seem to last longer
2 than we do.

3 MR. MAZZA: Yes, they do.

4 SENATOR PETRIS: They're in greater need than the
5 others.

6 Do you see any positive steps being taken in the
7 direction of those two groups to increase --

8 MR. MAZZA: I certainly think there could be. I
9 can't speak to those two specific issues, because I'm not -- I
10 would need to look into that; I really would.

11 SENATOR PETRIS: My last question is, since you've
12 been on a few months, I'm sure there a lot of things you're
13 still grappling with and learning, but if you were given the
14 authority, based on whatever statutes we have now, and you were
15 told to draw the plan for the coming year, what would you
16 emphasize? What would be your priorities and objectives within
17 the framework of this program? And what, if any, would you add
18 to it that might be lacking?

19 MR. MAZZA: I think I would strengthen the amount or
20 the outreach for more of the multi-family development within the
21 -- with the Agency's programs. That would be number one.

22 Number two, I would begin to also try to develop ways
23 to strengthen and maybe expand the insuring activities that
24 we've been -- that have been developed under CHFA, which is
25 called CHIF. It's a private insuring, mortgage insuring,
26 operation which tends to leverage the amount of a product in
27 these areas that you can do, the insuring it. That's basically
28

1 what FHA did for 50 years before they changed it.

2 By the way, it was the only profit making center in
3 the federal government. It's not today, but it was at one time.

4 SENATOR PETRIS: We used to have one at least.

5 MR. MAZZA: We did for almost 50 years.

6 SENATOR PETRIS: There aren't too many profit making
7 centers in the private sector, according to the financial pages
8 I'm reading in the last couple of months. I hope that's
9 temporary.

10 MR. MAZZA: That's true, at least in my business.
11 It's been a little tough.

12 SENATOR PETRIS: I wish you well. It's an extremely
13 important area, and we just haven't been able to make the
14 progress we want.

15 I'm glad you're there with all your experience in the
16 private sector in building single-family dwellings. I think you
17 have an appreciation of both those and the multi-family.

18 Thank you.

19 MR. MAZZA: Thank you.

20 CHAIRMAN ROBERTI: Senator Craven.

21 SENATOR CRAVEN: I was ready to make a motion,
22 Mr. Chairman.

23 CHAIRMAN ROBERTI: Is there any opposition in the
24 audience?

25 Seeing none, Senator Craven moves confirmation be
26 recommended to the Floor.

27 The Secretary will call the roll.
28

1 SECRETARY WEBB: Senator Beverly.

2 SENATOR BEVERLY: Aye.

3 SECRETARY WEBB: Senator Mello. Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Senator Craven.

6 SENATOR CRAVEN: Aye.

7 SECRETARY WEBB: Senator Roberti.

8 CHAIRMAN ROBERTI: Aye.

9 The vote is four to zero; confirmation is recommended
10 to the Floor.

11 Congratulations.

12 MR. MAZZA: Thank you very much.

13 [Thereupon this portion of the
14 Senate Rules Committee hearing
15 was terminated at approximately
16 2:25 P.M.]

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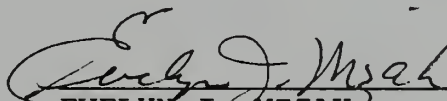
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of April, 1991.


EVELYN J. MIZAK
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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR HENRY MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ROBERT P. HEFLIN, Chief Trial Counsel
State Bar of California

SENATOR ROBERT PRESLEY

MARK T. HARRIS, Chief Legislative Counsel
State Bar of California

CHARLES S. VOGEL, President
State Bar of California

HOWARD HERSHIPS

ANNE GUNSBURG

RALPH MORRELL, Chair
Committee to Reform Spending Practices in the
California Legislature

INDEX

	<u>Page</u>
Proceedings	1
<u>Appointment by the State Bar of California:</u>	
ROBERT P. HEFLIN, Chief Trial Counsel State Bar of California	1
<u>Witnesses in Support:</u>	
MARK T. HARRIS, Chief Legislative Counsel California State Bar	1
Introduction by SENATOR ROBERT PRESLEY	1
CHARLES VOGEL, President California State Bar	2
Testimony of Appointee	2
Statutory Requirements for Position	3
Background and Experience	3
Questions by CHAIRMAN ROBERTI re:	
Role in Upgrading Bar Discipline	3
<u>Witnesses in Opposition:</u>	
HOWARD HERSHIPS	4
Report of State Bar Monitor	4
Failure of Attorneys to Honor Settlement Agreement	5
Need for Ground Rules	5
ANNE GUNSBURG	6
Need for Disciplinary Action	6
Background of Divorce Case	6
Need for Enforceable Guidelines	9

1		
2	RALPH MORRELL, Chair	
3	Committee to Reform Spending Practices	
	in the California Legislature	9
4	Corruption in State Bar	10
5	Attorney-Legislator and Application	
	of Section 6106 of B&P Code	10
6	Response by Complainants Grievance	
7	Panel	11
8	Request of State Bar to Discipline	
	Assembly Speaker	13
9	Responses by MR. HEFLIN re:	
10	Age of Complaints	14
11	Discipline Monitor's Eighth Report	14
12	Attorney-Legislators Subject to Bar	
13	Disciplinary Action	14
14	Statement by SENATOR BEVERLY re:	
15	Bar's Investigation of President	
	of United States	15
16	Comments by MR. MORRELL re:	
17	State Bar's Response to Complaint	
18	about Assembly Speaker	15
19	Comments by CHAIRMAN ROBERTI	16
20	Questions by SENATOR CRAVEN re:	
21	State Bar Disciplinary Monitor	16
22	Motion	17
23	Committee Action	17
24	Termination of Proceedings	17
25	Certificate of Reporter	18
26		
27		
28		

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: The next item is the appointment of Mr. Robert P. Heflin, Chief Trial Counsel of the State Bar of California.

MR. HARRIS: Mr. Chairman and Members of the Committee, I'm Mark Harris, Chief Legislative Counsel for the State Bar of California.

To my right is Bob Heflin, who's before you for confirmation. To his left is the President of the State Bar, Chuck Vogel, who can either speak as part of support for his confirmation or in any manner in which the Chairman feels comfortable.

CHAIRMAN ROBERTI: Why doesn't Mr. Vogel come forward, too. Mr. Heflin, why don't you take the middle chair. Senator Presley, I guess, will be here in support and another introduction.

Senator Presley, why don't we start with you.

SENATOR PRESLEY: Mr. Chairman, I'm just here as one who has spent considerable time in the last three or four years trying to reform the State Bar and make it work better. I think we have come a long way in that regard. They are considerably improved over their previous operations.

Mr. Heflin comes to us, much as the previous person in that capacity, Mr. Bascue, from the Los Angeles District Attorney's Office. He has a wide range of experience, particularly in consumer affairs and areas such as that, and

1 we've visited at length, and I'm convinced that he will carry on
2 very well with the work that was started by Mr. Bascue and would
3 be a real credit to the Bar as we continue to try to make
4 various improvements.

5 CHAIRMAN ROBERTI: Thank you, Senator.

6 Maybe we'll do this backwards. Mr. Vogel, why don't
7 you start.

8 MR. VOGEL: Thank you very much, Senator.

9 It's my pleasure to be here with Bob Heflin today.
10 Before we engaged Mr. Heflin, we undertook a significant search
11 program to find someone who would be committed and dedicated to
12 the much improved disciplinary system of the State Bar, which
13 was significantly designed and motivated, if I might put it that
14 way, by Senator Presley, and we found the right man.

15 I have worked with him this last six months, and he's
16 demonstrated the capacity, the understanding, and he's earned
17 the respect and loyalty of his colleagues and of the Board of
18 Governors.

19 So, without any further, just let me say that that's
20 all I have to say, but I'll respond to any questions you might
21 have.

22 CHAIRMAN ROBERTI: Thank you very much.

23 Now, Mr. Heflin, we'll ask you what we ask all the
24 Governor's appointees, and that's why you feel you're qualified
25 to assume this position.

26 MR. HEFLIN: Thank you.

27 I think if you look at the statutory requirements for
28

1 this position, my resume fits it rather well. In fact, I think
2 it fits it rather precisely.

3 As was mentioned, I spent over 21 years as a
4 prosecutor, the first 10 of those years in the courtroom, and
5 the last 10 years in management positions. And one of the, I
6 think, important aspects of my experience that relates to this
7 position is that I did civil litigation in the area of consumer
8 protection for a number of years. In one of my management
9 positions, I oversaw the investigation and prosecution of all
10 allegations against public officials of public employees.

11 I think those two experiences are uniquely important
12 for this position, because I think it relates rather well.

13 I think that I can bring to this position that
14 experience and my ability to make the decisions that a
15 prosecutor has to make that will focus the resources of the Bar
16 on the most harmful misconduct and on the worst offenders. I
17 want to continue what's been started, and I want to make sure
18 that there's a balanced relationship between our mission of
19 public protection and due process for our accused members.

20 CHAIRMAN ROBERTI: Thank you very much.

21 Are there any questions?

22 I guess one of the biggest issues has been upgrading
23 and streamlining the process of Bar discipline.

24 Can you just kind of briefly tell us what your
25 program -- I know Mr. Vogel's here, too, and he's extremely
26 important -- but what role do you have to play in this?

27 MR. HEFLIN: Well, as the Chief Trial Counsel, I'm,
28

1 in essence, the chief prosecutor for the State Bar. That means
2 that I'm responsible for the investigation, and if it follows,
3 the prosecution of any allegations of misconduct brought against
4 attorneys.

5 As has been mentioned here today, we've undergone
6 really quite a revolution in the way we approach that in the
7 California State Bar. As a result of legislative changes over
8 the past few years, we've gone from a volunteer system that
9 relied upon sort of a good will, I think, of the membership, to
10 an entirely professionalized prosecutorial court system that is,
11 each person is trained and prepared to do this as a full-time
12 professional job. All of our attorneys, all of our
13 investigators, and now the court.

14 We've adopted a modern management approach. Among
15 the things we've fully automated are our office and the court,
16 and with the training that we've provided recently, I think
17 we're prepared now to make that engine that we've created
18 operate very well into the future.

19 CHAIRMAN ROBERTI: Very good.

20 Any other questions

21 Is there any opposition in the audience? I think
22 there is some, so why don't you come forward. We'll get to
23 everybody. Come one by one.

24 MR. HERSHIPS: My name is Howard Hershships, and I'd
25 like to bring to the Senate Rules Committee Members the -- he's
26 passing out the eighth progress report of the State Bar Monitor,
27 which deals with the problems of nonprosecution against
28

1 opposition legal counsel who's violated the rules of ethics.

2 Through the process, it seems like attorneys that
3 have sanctions imposed by the courts for pleading false facts of
4 law, I've encountered like 32 cases where they've had sanctions
5 of over \$1,000 or more, and the Bar takes no prosecution against
6 them.

7 In my own personal experience, I had a complaint
8 filed against -- I filed a complaint against two California
9 attorneys who failed to honor a settlement agreement, and the
10 court imposed judgments, but they didn't have to be bothered,
11 and the Bar came back with their denial, saying that the
12 jurisdiction of the Bar is limited on disciplinary matters to
13 attorney-client relationships only.

14 I think the Monitor's report -- that I sent, has been
15 passed around -- points this out, that the attorney system in
16 California has reached a point where the level of attorneys
17 lying to the courts, the court doesn't understand who to believe
18 and who not to believe. And the Bar still doesn't do anything.
19 And I think that that has to be addressed.

20 I don't have anything against Mr. Heflin at all, but
21 I think it's the only time the citizens of the state have an
22 opportunity to bring out what can be done. The Monitor asserts
23 that the Bar has to set up some ground rules. I think something
24 should be set up.

25 I don't know if Mr. Heflin wants to respond.

26 CHAIRMAN ROBERTI: He'll respond at the conclusion of
27 all the witnesses. Yes, he will respond.
28

1 Thank you very much.

2 Any other witnesses? Please come forward.

3 MS. GUNSBERG: Anne Gunsberg, A-n-n-e
4 G-u-n-s-b-e-r-g.

5 And I would like to bring to the Senators' attention
6 that in my opinion, the Chief Trial Counsel must start to bring
7 disciplinary action. And I have a -- I could use my own case as
8 an example, and I'll try to state it very briefly. It's been
9 seven years of litigation.

10 I filed for divorce in San Francisco Superior Court,
11 and it became apparent that my ex -- my husband was sexually
12 molesting my children during visitation. And he then hired
13 Christopher F. Emley, a San Francisco attorney, to handle the
14 case.

15 The first thing that Mr. Emley did is, he prevented
16 investigation by the District Attorney's Office. My children
17 were at the time two and a half and six and a half -- five and a
18 half and two and a half. So the first thing he did, he had
19 worked in the District Attorney's Office, and he was able to
20 prevent all investigation.

21 The case was transferred to the County of Marin,
22 where the County Counsel, Ruth Ralson, was representing the
23 children. Together, Ms. Ralson and Mr. Emley concealed evidence
24 that was crucial to the upcoming hearing and trial: a tape
25 recording that my daughter had made. They outright lied to the
26 court and they concealed the evidence.

27 And after my husband admitted to the accusations that
28

1 he was indeed molesting the children, Mr. Emley noticed a
2 contempt hearing, saying that I was trying to prevent
3 visitation. I was never served, and I was not present at that
4 hearing, and I was not represented at the hearing. My attorney
5 was permitted to withdraw in the beginning of the hearing.

6 As a result of that, a bench warrant was issued and I
7 was put in jail for six days. And my children were put in the
8 Juvenile Hall or county shelter.

9 Because of the subsequent unavailability, the
10 children were given to Mr. Emley's client, a self-admitted child
11 molester, on the basis that the mother was unavailable.

12 Then Marin County charged me with emotional abuse,
13 saying that I had prevented visitation and the children were
14 suffering from trauma because of that. So, I contested it, and
15 it went -- this litigation lasted for approximately eleven
16 months. And during that litigation, Mr. Emley was caught in
17 forgery on one occasion, outright forgery, forging court
18 documents.

19 And when I filed a lawsuit against the County of
20 Marin, the case was transferred to San Francisco. There were no
21 custody orders in effect, and at that time, Mr. Emley advised my
22 ex-husband to go and contact two San Francisco police officers,
23 who forced their way into my apartment, took my children, citing
24 a court order that did not exist. This took two years in
25 federal court, and the San Francisco County admitted that there
26 as no order in effect.

27 In the process of that litigation, there were, again,
28

1 two forgeries in the San Francisco Family Court.

2 So, I was arrested, and then the District Attorney,
3 Kirk Lauder, whom apparently Mr. Emley knew, decided to
4 prosecute for my false charges. So, I was in criminal court in
5 San Francisco for eleven months. Only when it reached trial
6 where those charges -- first they were reduced so that I
7 couldn't get a jury, and then dropped altogether.

8 During the entire litigation in San Francisco and in
9 Marin County, Mr. Emley has been allowed to submit to the court
10 false documents. He had to admit to some of those forgeries and
11 perjuries. And the court did not do anything.

12 The end result of this is that my children are still
13 living with a self-admitted child molester, and Mr. Emley only
14 recently has been able to get a court order based on a personal
15 correspondence with the judge, without any formal motions or
16 anything else.

17 The point of all of this is that this attorney,
18 Christopher F. Emley, he has managed to, by fraud, deceit, lies,
19 forgeries, perjuring himself, he has managed to remove the
20 children from my custody, and his client, the child molester,
21 has full custody right now. And he has further basically
22 managed to cut almost all ties between mother and children by
23 the forgeries and false statements.

24 What I would like the Bar to do is to establish some
25 sort of a disciplinary machinery so that an attorney, like
26 Christopher Emley, can be stopped before the damage is done.
27 Now, even after the damage is done, I have no recourse of any
28

1 kind because I cannot sue him. He cannot be sued. The Bar does
2 not bring any disciplinary action.

3 Even the State Bar Monitor seems to favor -- seems to
4 say that something should be done.

5 Christopher Emley was convicted of fraud in a civil
6 case in San Francisco, and the Bar hasn't done anything. He now
7 has volunteered to act as Justice Pro Tem in Superior Court in
8 San Francisco, and it seems to me that this is almost a reward
9 for his fraudulent acts.

10 And the courts do not care. So, some sort of
11 guidelines that are enforceable must be established, because
12 under the current practice, the attorneys have a carte blanche to
13 commit fraud without any repercussions, like Mr. Emley using his
14 connections to defraud. He has access to the system, and he's
15 not accountable to anybody. So, even if my children died
16 because of his misuse of the system, I would have no recourse.

17 I think that will conclude my testimony. Thank you.

18 CHAIRMAN ROBERTI: Thank you very much.

19 Are there any questions of Ms. Gunsberg?

20 Mr. Morrell.

21 MR. MORRELL: My name is Ralph Morrell, and Senator,
22 I Chair a statewide group known as the Committee to Reform
23 Spending Practices in the California Legislature.

24 I've devoted a great deal of time to that, as you
25 know. The California Legislature was identified by the The
26 Sacramento Bee editorial in 1981 as being corrupt. Subsequent
27 events, culminating in the adoption of Prop. 140 by the people
28

1 of California, would seem to confirm some belief.

2 Today I want to assert the State Bar of California is
3 corrupt. And if I may have a few uninterrupted cooperation of
4 the Rules Committee to ask this nominee one or two questions,
5 some light may be shown on his qualifications to occupy this
6 significant position affecting the lives of California's
7 attorneys, and more significance, the lives of every Californian
8 seeking legal counsel.

9 CHAIRMAN ROBERTI: How we normally do that, Mr.
10 Morrell, is, you will make your presentation, and then after
11 your presentation is over, Mr. Heflin will address all the
12 questions that have been raised to him.

13 MR. MORRELL: Thank you.

14 In my prepared statement I said, let it be recognized
15 I do not know the gentleman and offer no prejudgment. Having
16 received just a few minutes ago a copy of his resume, I have to
17 modify that statement in light of the fact that he was, since
18 January, 1990, a member of the Complainants Grievance Panel,
19 appointed by the Bar of Governors. And accordingly, I presume,
20 he participated in one, or two, or three cases which I've had
21 with the Complainants Grievance Panel, which I wanted to talk to
22 you about a little bit.

23 One of the first questions I'd like to ask the
24 nominee is whether or not an attorney who is a Member of the
25 California Legislature is subject to Section 6106, Business and
26 Professions Code, which calls for suspension or disbarment in
27 the case of dishonesty.
28

1 It was quite by accident that I sat next to the other
2 people here, and the State Bar Discipline Monitor, Mr. Felmeth,
3 has recently addressed this issue. The Bar must begin to search
4 for ways to deter attorney deceit. And that's basically what
5 I'm addressing.

6 Several years ago, I wrote a series of published
7 columns critical of some individual Legislators, and one
8 concerned a Legislature who at the time was a member of the
9 Assembly Rules Committee. This law maker wrote me with a copy
10 to the editor asserting he had never been a member of the Rules
11 Committee, and that I had defamed him and demanded a retraction.

12 I sent a complaint to the State Bar alleging
13 violation of Section 6106, which calls for suspension. The Bar
14 responded declining to act on the basis that although his
15 statement was false, the Bar would take no action because he did
16 not know he was a member of the Assembly Rules Committee.
17 Notwithstanding, as the evidence here will indicate, he stood
18 before the people of his -- stood before the people of his
19 constituency and stated publicly, as a member of the Assembly
20 Rules Committee, "I did so and so."

21 The Bar Complainants Grievance Panel, reviewing the
22 State Bar's rejection, declined to reverse or do anything about
23 that objection, but didn't give any reason why a Member of the
24 Legislature who's a lawyer can lie and repeatedly lie in two
25 different letters about his membership as a member of the Rules
26 Committee. Not only does his statement in the press, but the
27 Assembly Daily Journal clearly reveals his appointment.
28

1 If that were all, that's more or less a personal
2 thing, but there's another issue, and I do believe honestly if
3 the State Bar had addressed this one with the integrity that the
4 people of California expect, Proposition 140 may never have been
5 introduced and, arguably, may never have been adopted, absent
6 the fiscal element, which has been the subject of my endeavors
7 and the endeavors of my committee, which incidentally is
8 represented by 32 city and county governments and about 35
9 taxpayers' associations across the state.

10 In this second case, when I discovered, as you are
11 aware, that there was a statute on the books which exempted the
12 Legislature's spending from audit by the State Controller, I
13 wrote to Assembly Speaker Willie Brown and asked him to please
14 do something about this, because we were being barraged by the
15 Capitol Press Corps with reports of misconduct, conceded by
16 Senator Barry Keene, amongst others.

17 He wrote me falsely stating -- falsely stating --
18 that the fund had been audited by the State Controller since
19 1979. That's false as specified by a dozen different sources,
20 and the Foreman of the Sacramento County Grand Jury, amongst
21 others.

22 CHAIRMAN ROBERTI: Mr. Morrell, I'm appreciating your
23 testimony --

24 MR. MORRELL: I'll be as brief as I can.

25 CHAIRMAN ROBERTI: Can you tie it in?

26 MR. MORRELL: I'll try to get right to the bottom of
27 it.
28

1 The bottom line is this, Senator Roberti, if the
2 State Bar had pursued this issue of a lying Speaker of the
3 Assembly, Willie Brown -- he not only lied to me, but he lied to
4 the Marin County Taxpayers' Association in writing -- and
5 disciplined this person, even to the extent of writing him a
6 letter of censure, or whatever, to put the brakes on this
7 barrage of reports of unwarranted spending by the Legislature,
8 it's arguably the fiscal element of Prop. 140 may never have
9 occurred, and over and above that, the recent appointee, Matthew
10 Fong, stated in the public press that had -- that Proposition
11 140 was adopted primarily as a result of the efforts of this
12 committee. And we would not have been a committee, we would not
13 have been anyplace or done anything had the State Bar not been
14 so corrupt as to overlook the Speaker's falsehoods.

15 I think I made my -- my first question, again, was
16 does the State Bar have a responsibility to audit -- to
17 discipline attorneys who are Legislators? And secondly, since
18 the gentleman was a member of the Complainants Grievance Panel,
19 perhaps he can do what they wouldn't do in their letter and
20 explain to me how things, and a couple of others, were handled
21 the way that they were.

22 Thank you, sir.

23 CHAIRMAN ROBERTI: Thank you.

24 Any other witnesses

25 Then, Mr. Heflin, you may conclude.

26 MR. HEFLIN: Thank you, Mr. President.

27 It's not only difficult, but it's impossible for me
28

1 to respond in any meaningful way to individual cases or
2 complaints that clients or other members of the public might
3 have about contacts they may have had with attorneys in the
4 past.

5 In fact, if one looks at these matters that have been
6 brought up here, the age of them indicates to me that perhaps
7 the changes we've undergone in the last few years have already
8 borne fruit, because these are not recent matter.

9 Without going into them, because I really can't
10 because I don't know the details, I think at least two of the
11 speakers mentioned the eighth Monitor's report, the Discipline
12 Monitor, who, I'm sure you're aware, is charged with the
13 responsibility of, every six months, issuing a report on the
14 attorney discipline system in California to determine how well
15 we're doing in implementing the legislation that was intended
16 and, I think, is reforming the attorney discipline process in
17 California.

18 His most recent report, I think, points out very
19 clearly that we are making progress. In fact, he describes it
20 as momentous. And so, I would contend that the best response
21 might be a thorough and complete reading of that report.

22 There was a specific issue raised, though, that I
23 think I can respond to, and that was the general question about
24 attorneys licensed to practice law in California, if they are
25 engaged in another pursuit, even if they're Members of the
26 Legislature, are they still subject to the discipline process of
27 the State Bar? And the answer to that is yes. An attorney
28

1 still, if he is licensed to practice in California, if he
2 violates the rules of professional conduct, may be subject to
3 our discipline process.

4 Thank you. That's the response that I have to the
5 comments made by the witnesses.

6 SENATOR BEVERLY: On that last point, as I recall,
7 the State Bar pursued at least an investigation of a President
8 of the United States, who was a member of the Bar.

9 MR. HEFLIN: That's correct. He's no longer a member
10 of the Bar, I don't think.

11 MR. MORRELL: Mr. Roberti, if I may finish this
12 briefly.

13 On the first occasion of my addressing the State Bar
14 of California, complaining about this lying attorney Legislator,
15 Willie P. Brown, the answer I got back -- and unfortunately, I
16 didn't bring it with me, but I'll sure provide it -- the answer
17 I got back -- had I been satisfied, I would have just dropped it
18 -- but the answer I got back is: Mr. Morrell, although you may
19 be right in what you're saying, attorneys who are Legislators
20 are not subject to Section 6106 of the Business and Professions
21 Code, signed on authority of the Chief Trial Counsel. Yes, sir.

22 CHAIRMAN ROBERTI: Mr. Heflin, you may continue. Do
23 you have anything further to say?

24 MR. HEFLIN: I didn't have anything further, but I'd
25 be willing, obviously, to answer any questions you or the other
26 Senators might have.

27 CHAIRMAN ROBERTI: Are there any other questions of
28

1 Mr. Heflin?

2 I think the ground has been covered. I'm encouraged
3 by your appointment, frankly, to bring a note of openness into
4 the process. I think it is an example of the Bar moving a
5 little bit toward consumer protection.

6 Senator Craven.

7 SENATOR CRAVEN: I just want to ask a question.

8 I'm not really familiar with this. I'm the only
9 nonattorney Member present today.

10 Is Mr. Felmeth assigned by the California State Bar
11 as a Monitor of the Bar?

12 MR. HEFLIN: No, he's not assigned by us. He's
13 appointed by the Attorney General.

14 SENATOR CRAVEN: Oh, is he?

15 MR. HEFLIN: It's his responsibility to monitor and
16 audit the State Bar's discipline system and to report twice a
17 year back to the Legislature on the progress we're making.

18 SENATOR CRAVEN: Well, the reason I ask, Mr. Felmeth
19 is involved in many things aside from the monitoring to which I
20 referred, and I just wondered whether it was something that he
21 had taken unto himself to do, which he is wont to do at times,
22 or whether it was an assignment. The latter is correct.

23 MR. HEFLIN: It's a position created by statute.

24 SENATOR CRAVEN: Yes, I understand. And the Bar does
25 not make the assignment; that's done by the Attorney General.

26 MR. HEFLIN: He's entirely independent of the State
27 Bar.
28

1 SENATOR CRAVEN: I understand. Thank you very much.

2 CHAIRMAN ROBERTI: Senator Beverly.

3 SENATOR BEVERLY: I'm prepared to make a motion.

4 CHAIRMAN ROBERTI: Senator Beverly moves --

5 SENATOR BEVERLY: I move the approval of the
6 nomination by the State Bar.

7 CHAIRMAN ROBERTI: -- the approval of Robert Heflin
8 as Chief Trial Attorney of the State Bar of California.

9 Any further discussion or debate? Hearing none,
10 Secretary will call the roll.

11 SECRETARY WEBB: Senator Beverly.

12 SENATOR BEVERLY: Aye.

13 SECRETARY WEBB: Senator Mello. Senator Petris.
14 Senator Craven.

15 SENATOR CRAVEN: Aye.

16 SECRETARY WEBB: Senator Roberti.

17 CHAIRMAN ROBERTI: Aye.

18 The vote is three to zero; confirmation is
19 recommended to the Floor.

20 Congratulations.

21 [Thereupon this portion of the
22 Senate Rules Committee hearing
23 was terminated at approximately
24 2:40 P.M.]

25 --oo0oo--
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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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Evelyn J. Mizak
Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR HENRY MELLO

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

THOMAS W. HAYES, Director
Department of Finance

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
THOMAS W. HAYES, Director Department of Finance	1
Question by CHAIRMAN ROBERTI re:	
Deficit Projections	2
Motion	2
Questions by SENATOR PETRIS re:	
Cuts in AFDC Grants	2
Compelling Fathers to Pay Child Support	3
Senator Hart's Bill	5
Parents' Fair Share Program	5
Committee Action	7
Termination of Proceedings	7
Certificate of Reporter	8

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: We will now take up the confirmation of Thomas Hayes, Director of Finance.

We'll ask you what we ask all the Governor's appointees, and the question is: why do you feel you're qualified to assume this position?

MR. HAYES: Well, Senator, this is the third time I've had the pleasure of sitting in front of this body for confirmation, so I won't make a lengthy statement.

The Director of Finance is a financial position. I have over 20 years of financial experience. I view the job as the chief fiscal adviser to the Governor, but also the point of contact between the administration and the Legislature and the general public on financial issues. So, I've worked with most of the Members of the Legislature in the past, and I think we've done some fairly productive accomplishments.

I'm a believer that the financial decisions that we make in the 1990s are going to determine the success of government during that time. There are going to be a number of tough financial decisions, as indicated by what we're going through this year.

I can't promise you that I will always agree with you, but I can promise that I'll always be available to work out what we can come to as the best decisions on behalf of the people of California.

So, I'm here to answer any questions that you have.

1 I think the Members of this Committee know my background, and
2 whatever I can do to add information to that, I'd be glad to.

3 CHAIRMAN ROBERTI: Very good.

4 Are there any questions?

5 Do we have any projections on the deficit getting any
6 larger?

7 MR. HAYES: As you know, it's a projection. I think
8 if it changes, it will get larger rather than smaller, but at
9 the present time we're staying with the twelve-six.

10 CHAIRMAN ROBERTI: I hope so.

11 Are there any other questions? We know your
12 qualifications. We think you're an excellent appointee.

13 SENATOR BEVERLY: I'm prepared to make the
14 recommendation that we approve the nomination.

15 CHAIRMAN ROBERTI: Senator Beverly moves the
16 nomination be approved and moved to the Floor.

17 Senator Petris.

18 SENATOR PETRIS: I'd like to address the problem of
19 the Governor's desire to cut AFDC grants and have mothers put in
20 time working. I don't know where they're going to work, where
21 they're supposed to find these jobs. I suppose extra work hours
22 to make up the lost dollars.

23 Number one, I'd like to know what is the Governor's
24 plan? I guess he's looking to you for a plan or the head of the
25 proper agency. But from the budget standpoint, Finance
26 Department, can you enlighten us on that?

27 It's a two-part question. One is, where are these
28

1 mothers going to be directed to earn the dollars to make up for
2 the cut, which I think is, what, \$39 a month for a woman with
3 one child?

4 MR. HAYES: It's \$60 a month, but then when you net
5 out the additional food stamps, it's about \$40.

6 SENATOR PETRIS: Yes, I was thinking of the net.

7 And the second question is, is there anything in the
8 hopper relating to compelling fathers to provide more child
9 support? That's an ever growing problem and the gap is getting
10 wider and wider, and there are fathers that don't contribute
11 money to support their children. That dumps them on to the
12 public; more and more children go on the public program who
13 shouldn't be there if the fathers would do what's required of
14 them.

15 I'm wondering if there's any corresponding effort by
16 the Governor to make up for money losses in that category?

17 MR. HAYES: Let me answer the first question first.

18 The reduction of the AFDC grant was a difficult
19 decision on the part of the administration. It's a difficult
20 financial year, and the Governor views the AFDC program as
21 transitional, as differentiated from the SSI/SSP program, and he
22 wanted to provide additional incentives for people to go to
23 work. It will be difficult to get jobs, but I don't think that
24 that is insurmountable.

25 And at the same time as the reduction of the grant
26 was proposed, there was a proposal to allow additional earned
27 income to earn back up to that amount without losing Medi-Cal
28

1 eligibility or the other benefits or eligibility for AFDC.

2 Now, if you remember, Senator, the Governor at the
3 same time as he made this proposal, he proposed about \$200
4 million in initiatives to target basically the same target
5 group, aimed at mothers, pregnant mothers, young children,
6 health programs, and early education programs that are targeted
7 as a means to get the children better able to go to school when
8 they get there. They're healthy and interested when they get
9 there. It is his intent that this will serve as the basis so
10 that it will actually reduce not only the AFDC population but
11 the prison population, but it'll be a number of years out.

12 Relative to the collection of child support payment,
13 I know I can speak personally on this, but I think the state
14 ought to do whatever we can to collect child support from
15 fathers that do not pay. I think it's unconscionable that a
16 father would not pay the child support.

17 As to what programs the state has to do that, I'm not
18 an expert in social services. I'm a financial expert, but I
19 will tell you that it puts a heavy burden on the State of
20 California when child support isn't paid. I know that you have
21 worked in the past with Assemblyman Agnos, and when he did his
22 child support bills, I was helped by -- I helped him in drafting
23 some based on work that we'd done as Auditor General.

24 SENATOR PETRIS: I would recommend that we revisit
25 that. Even if all the fathers paid the proper amount ordered by
26 court, it's still less than the AFDC grant. So, there's a gap.
27 It means they have to make up the difference, because they're
28

1 still eligible for that increment.

2 It seems to me that the two ought to match where ever
3 possible so that we relieve the state of any additional burden.
4 In other words, if these children were taken care of by their
5 fathers in compliance with a suitable schedule provided by the
6 court or through our legislation, I don't have numbers on it,
7 but it seems to me we could save a tremendous amount of money.

8 Senator Hart a bill in Judiciary that would require
9 an increase because at the current level, we're 44th in the
10 nation, and it would raise us up to number 6. So, I was hoping
11 the administration would be strongly behind it, because it
12 impacts severely or rather substantially on your budget
13 planning. If you don't have to provide this difference through
14 AFDC, it would be money we save or money we could transfer to
15 other vitally needed social needs.

16 MR. HAYES: If you have the bill number, I'll look at
17 it personally, at the Hart bill, Senator.

18 SENATOR PETRIS: It's SB 1161. It's up next week on
19 Tuesday in Judiciary. You may want to have your people check
20 that out and give it some support.

21 MR. HAYES: I will.

22 SENATOR PETRIS: Now, one other question. The
23 Parents' Fair Share program, at the national level, are you
24 familiar with that?

25 MR. HAYES: No, I am not.

26 SENATOR PETRIS: It's done by the federal government
27 in cooperation with some foundations. It's a pilot program to
28

1 require unemployed fathers whose children are receiving AFDC to
2 attend some job training courses that are mandatory, similar to
3 the GAIN program, where we are now requiring mothers to do just
4 that. But we don't seem to be touching the fathers much, and I
5 think we're overlooking a possible source of income to help plug
6 the gap in those areas.

7 Unfortunately I don't have much more information than
8 that. The Governor's been asked to participate in the national
9 meeting as a representative of California in order to get a
10 pilot program going in California, to include us in the national
11 pilot program.

12 So, I would pass that on to you.

13 MR. HAYES: I will discuss that with the Secretary of
14 Health and Welfare.

15 SENATOR PETRIS: Maybe they're covering it already.
16 I don't know.

17 Thank you.

18 CHAIRMAN ROBERTI: Any other discussion or debate?
19 Senator Beverly's motion is before us.

20 Is there opposition in the audience? Secretary will
21 call the roll.

22 SECRETARY WEBB: Senator Beverly.

23 SENATOR BEVERLY: Aye.

24 SECRETARY WEBB: Senator Mello.

25 SENATOR MELLO: Aye.

26 SECRETARY WEBB: Senator Petris.

27 SENATOR PETRIS: Aye.
28

1 SECRETARY WEBB: Senator Craven. Senator Roberti.

2 CHAIRMAN ROBERTI: Aye.

3 The vote is four to nothing; confirmation is
4 recommended to the Floor.

5 MR. HAYES: Thank you, Senators.

6 SENATOR PETRIS: One final question.

7 CHAIRMAN ROBERTI: Senator Petris.

8 MR. HAYES: I almost got away.

9 SENATOR PETRIS: In view of what we receive everyday
10 in terms of more and more bad news, are you sure you want this
11 job?

12 [Laughter.]

13 MR. HAYES: I had my chance to get to the private
14 sector after I found out I was a better financial manager than a
15 politician.

16 But yes, I want it. I'm a believer in public
17 service, and I think I can do some good.

18 SENATOR PETRIS: I'm glad you are.

19 Thank you.

20 [Thereupon this portion of the
21 Senate Rules Committee hearing
22 was terminated at approximately
23 4:00 P.M.]

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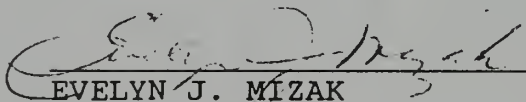
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SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR HENRY MELLO

SENATOR ROBERT BEVERLY

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

DOUGLAS P. WHEELER, Director
Resources Agency

SENATOR MARIAN BERGESON

MARK J. PALMER, Conservation Chairman
Mountain Lion Foundation

JERRY MERAL, Executive Director
Planning and Conservation League

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
DOUGLAS P. WHEELER, Director Resources Agency	1
Introduction by SENATOR MARIAN BERGESON	1
Background	2
Questions by CHAIRMAN ROBERTI re:	
SB 18 (Hill)	5
Lack of Administrator for Oil Spill Prevention and Response Program	6
Lack of Environmental Appointment to Waste Management Board	7
Changes in Department of Fish and Game	7
Fire Hazard of Dead Wood in Forests	8
Questions by SENATOR MELLO re:	
Funding of Department of Fish and Game	9
Decline in Licenses	11
<u>Witnesses in Support:</u>	
MARK PALMER, Conservation Chairman Mountain Lion Foundation	11
JERRY MERAL, Executive Director Planning and Conservation League	12
Motion	13
Committee Action	13
Termination of Proceedings	13
Certificate of Reporter	14

P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN ROBERTI: The next item on our agenda is the appointment of Mr. Douglas P. Wheeler, Secretary of the Resources Agency. Senator Bergeson is here to introduce Mr. Wheeler.

SENATOR BERGESON: Thank you, Mr. Chairman, Members of the Committee.

During his campaign, Governor Wilson reiterated a strong commitment to maintaining an enhancement of California's natural resources and the quality of our environment. The Governor showed that he intended to carry out those commitments when one of his first appointments to the cabinet level was named Douglas P. Wheeler, Secretary for Resources and head of the Resources Agency.

Mr. Wheeler comes from a very, very impressive background. He comes from Washington, D.C., where he was Vice President of the World Wildlife Fund and the Conservation Foundation. He's the former Executive Director of the Sierra Club. He is the founder and past President of the American Farmland Trust, and served in the Department of the Interior as Assistant Secretary for Fish, Wildlife and Parks.

He's known nationally and widely respected for his work in the field of resources management. I think we're indeed fortunate to have a man of his reputation, his integrity, and most certainly his vast experience.

I heartily recommend him and am very pleased to

1 introduce him to you at this time, and I know you will enjoy
2 meeting him as much as I have, Mr. Douglas P. Wheeler.

3 CHAIRMAN ROBERTI: Thank you, Senator.

4 We'll ask you what we ask all the Governor's
5 Appointees, and that's why you feel you're qualified to assume
6 this position?

7 MR. WHEELER: Thank you, Mr. Chairman, and I'd like
8 to thank Senator Bergeson for that very gracious introduction.

9 If I might respond to your question, Senator, by
10 offering a few remarks about my background and about my
11 perspective on the issues which confront me as Secretary of
12 Resources.

13 Obviously and needless to say, I'm honored to have
14 been nominated by Governor Wilson, whose views on resource
15 issues I have shared since we first met while I was Executive
16 Director of the Sierra Club in 1985. When he asked me to serve
17 as Secretary, I had no need, therefore, to inquire about the
18 depth or the breadth of his commitment to conservation and
19 protection of environmental quality, or that his would be an
20 active administration in these areas. The record is clear, as
21 Mayor of San Diego, as an Assemblyman, as a United States
22 Senator, Pete Wilson has been a consistent proponent of resource
23 stewardship and sustainable development.

24 And so, to respond to your question more directly,
25 Senator, from my perspective, here is an opportunity to join an
26 administration whose objectives very closely resemble my own,
27 and to make use of 20 years' experience as a resource
28

1 professional in the protection of California's magnificent
2 legacy of natural and cultural assets.

3 Though I return to California now after a three-year
4 absence, and have had substantial experience on the East Coast,
5 my interest in the protection of California's resources has been
6 continuous since my first visit when I was an attorney with the
7 Department of the Interior to facilitate establishment of the
8 San Francisco Bay National Wildlife Refuge and the Golden Gate
9 National Recreation Area. Since that, and that was in 1972,
10 I've worked with the American Farmland Trust. Its first field
11 office was here in California, with the Sierra Club which is
12 headquartered here, as you know, though recent association with
13 the Conservation Foundation and its successful Communities
14 Program in Contra Costa, Orange and Stanislaus Counties.

15 My involvement in issues pertaining to resource
16 protection in California has been extensive and continuous. But
17 I have observed, as all of you know, that the threats to
18 California's resources have never been greater than they are
19 today. Development and population growth have challenged even
20 our most common assumptions about the longevity of California's
21 natural bounty.

22 As the Governor said in his inaugural address, we
23 must, quote:

24 "... secure the spirituality of Big
25 Sur and safeguard cathedrals of
26 redwoods that were already old at
27 the time of Christ."
28

1 We are guided in this complex task by simple
2 principles: stewardship, the responsibility to leave for
3 future generations that which has been left for us;
4 partnership between public and private, local, state and
5 federal governments, Republicans and Democrats, the executive
6 branch and the legislative branch; and sustainability, a plan
7 for resource management which meets the test of time because
8 it recognizes the interdependency of a healthy growing
9 economy and a healthy environment.

10 These are principles which led to the development
11 of Resourceful California, which was announced by the
12 Governor on Earth Day, a \$14.651 million program which meets
13 the state's most urgent needs in the protection of open space
14 and wildlife habitat, in providing recreational
15 opportunities, in managing the state's magnificent coastal
16 resources, and ensuring continued productivity of our farms
17 and forests, among other objectives.

18 These will be our priorities in the months ahead,
19 and I will need your help, Senators, all of you, in refining
20 and implementing these goals, because there's more to do than
21 can be done by the Resources Agency alone, even with the
22 extraordinarily strong support of Governor Wilson.

23 We will also have to have as partners the dedicated
24 employees who are my colleagues at the Resources Agency;
25 people whose skills, training and commitment are absolutely
26 essential to a successful stewardship. All of us are
27 stewards together of the natural resources which have shaped
28

1 the California character. As the Governor said on Earth Day
2 in announcing Resourceful California at the Resources
3 Building, if we lose them, we lose not only part of our
4 heritage, but part of ourselves.

5 Senator, I am joined today by members of my staff
6 and others who are members of the administration's team on
7 resources. I'd like you to meet the Undersecretary Michael
8 Mantell; Assistant Secretary Carol Whiteside; Assistant
9 Secretary Christine Sproul; Deputy Secretary Sally Jantz;
10 Assistant Secretary Hal Warass; and also Rich Sybert who's
11 here from the Office of Planning and Research, or was here,
12 and his Deputy John Amodio.

13 Thank you for this opportunity to make a brief
14 statement.

15 CHAIRMAN ROBERTI: Thank you.

16 I have a whole list of questions that various
17 Members wanted me to ask. I'll start with one of my
18 concerns.

19 Senator Hill has a bill, SB 18, which evidently is
20 being sponsored by your department, which would, among other
21 things, indicates that no GO bonds could be used for local
22 park or recreation purposes.

23 What is the reason for that policy change?

24 MR. WHEELER: That is not our position. He is
25 carrying that portion of the administration's package which
26 pertains to the 50 percent vote to provide for parks and open
27 space at the local level.
28

1 But we would not go so far as to preclude the use
2 of GO bonds.

3 CHAIRMAN ROBERTI: That encourages me, because one
4 reason for that provision, and most of that money is pursuant
5 to a bill which I authored a number of years ago, is just to
6 equalize state funding for urban areas as well as non-urban
7 areas. This would get us back to the disparate method of
8 financing where urbans had to pay for their parks, but if you
9 were fortunate enough to go to a state park, that was paid
10 for by the state.

11 MR. WHEELER: The bill has -- Resourceful
12 California has two principle objectives. One, to meet the
13 urgent priority needs of the state system as we have
14 identified those since the Governor took office, and
15 obviously before, because so many of those have been
16 discussed for so long. And then also to provide an
17 opportunity for local governments to meet local needs through
18 the use of the 50 percent bonds.

19 CHAIRMAN ROBERTI: Very good.

20 Senator Keene has asked me to ask, but I think he
21 reflects the interests of the entire Senate: after great
22 suffering through all of the last session, the Oil Spill
23 Prevention and Response Program was passed. Evidently to
24 date, there is no administrator for that program.

25 Our concern is, when do you plan to appoint an
26 administrator, and what are you looking for as far as
27 qualifications of an administrator?
28

1 MR. WHEELER: Let me respond by saying that it is a
2 high priority of ours as well to appoint a capable person to
3 that job. Not all of the appointments, as you know, have
4 been made in the new administration, and this is among those
5 which will be made very soon.

6 I do want to say, however, to assure the Senate,
7 that that does not mean the program is not being amply
8 administered. There is an acting administrator. There are
9 funds for the program, and there are personnel being
10 appointed daily to carry out the mandate of the Legislature.

11 CHAIRMAN ROBERTI: Also, I think in the area of
12 integrated waste management and the board that was set up to
13 deal with that, one of the environmental positions required
14 is one of the Governor's appointees. There, too, I
15 understand, no appointment has been made. Directly it's the
16 Governor's responsibility, but I presume your influence is
17 going to be significant.

18 MR. WHEELER: I will attempt to exert that
19 influence, sir.

20 CHAIRMAN ROBERTI: Another question that everybody
21 is obviously interested in is, and this does not necessarily
22 reflect a recommendation of mine but just general interest,
23 will there be a change in the Department of Fish and Game.
24 And if so, what is that going to take place?

25 MR. WHEELER: Let me explain --

26 CHAIRMAN ROBERTI: I know Mr. Bontadelli quite
27 well. I like him; he used to work with the Senate, but some
28

1 Members are very concerned in this area.

2 MR. WHEELER: I have a high regard for
3 Mr. Bontadelli as well and have had discussions with him as
4 with respect to his status, as we've had with the other
5 directors.

6 The assumption has been, Senator, that there would
7 be new appointments in virtually all of those departments
8 which are part of the Resources Agency. Some have been made,
9 and some are yet to be made. No decision has been made with
10 respect particularly to Mr. Bontadelli.

11 CHAIRMAN ROBERTI: With the drought, we have had
12 major changes in the topographical conditions of California.
13 One of those is just dead wood in our forests, and there
14 is a concern, especially from a lot of the Legislators who
15 represent those areas, that not much is being done to try to
16 remove fire hazards.

17 Do you have a program in this area?

18 MR. WHEELER: Two important issues arise here. One
19 is the fire hazard that dead wood represents. Some forests
20 have been stricken by as much as 30 percent in loss of
21 standing timber. The other is the potential salvage value,
22 the commercial value, of that timber.

23 I have recently visited the Angeles and Cleveland
24 National Forests in the company of Ron Stuart, who is a
25 regional forester. This a matter largely of concern to the
26 U.S. Forest Service and not to CDF, as you probably know. We
27 have encouraged them to accelerate their programs, both
28

1 because of the commercial value and because of the fire
2 hazard. That is a matter of concern to CDF.

3 CHAIRMAN ROBERTI: So you're very much on top of
4 that?

5 MR. WHEELER: Yes. And having included a personal
6 visit to the sites where this problem is the most severe, you
7 ought to know that the amount of salvage occurring has
8 increased precipitously, happily, over the last year or so as
9 this condition persists, in the neighborhood of 150,000 board
10 feet to about 850,000.

11 CHAIRMAN ROBERTI: Thank you very much.

12 Are there any other questions? Senator Mello.

13 SENATOR MELLO: Thank you, Mr. Chairman.

14 I'd like to follow-up on a question raised by
15 Senator Roberti about the Fish and Game Department.

16 Being an avid fisherman myself and at times a
17 hunter, I've followed over the years what has happened in
18 that department. It's one of the few departments that we,
19 the state, require the users to pay for the operation of the
20 department.

21 Now, your predecessor, Mr. Van Vledt, who
22 represented the previous administration, early on he said the
23 only way the Fish and Game Department can survive, because of
24 declining licenses bought by sportsmen, fishermen and others,
25 is, it should be funded out of the general fund to a certain
26 extent, because of the preservation of the resources, both
27 fisheries and game, habitat, wetlands. And they're asked now
28

1 to evaluate the Coastal Commission permits as it relates.

2 But so far, what aggravates me is that the sports
3 fishermen, commercial fishermen and others are paying almost
4 entirely the whole cost of that operation, with the exception
5 of what state fees are put in and some federal fees.

6 I guess I made more of a statement than a question,
7 but my question is: do you agree that this department, being
8 in fiscal difficulty, has to be funded by the general fund?

9 This is probably not the right year to launch that
10 program, but I think early on, it should be funded just like
11 the Department of Forestry, or many other departments that
12 are paid not with user fees but paid for by the general fund
13 of the State of California.

14 MR. WHEELER: I do agree that I think a mix is
15 needed of the special fees, which are coming from hunting and
16 fishing activity, but at a declining level, as you've already
17 indicated.

18 As the responsibilities of that agency grow, the
19 demands upon it grow in terms of the number of constituencies
20 that it serves, we've got to find new ways to fund their
21 activities.

22 I've had a meeting with the legislative staff
23 recently in the Office of Legislative Analysis because of the
24 need to identify a sustainable long-term funding prospect for
25 that agency. We have been working from year to year, from
26 patch work to patch work, to keep it going. AB 3158 is a
27 good example of that, which has not met its promise; another
28

1 effort in the user paying for the use of permits by the fish
2 and game specialists.

3 And I would agree with you that we've got to find
4 number of new sustainable funding sources, including the
5 general fund, when and if those become available. You're
6 right, this is not a good time to be looking at the general
7 fund.

8 SENATOR MELLO: That's good, then. I follow the
9 statistics very much.

10 In hunting, there's more deer taken by poachers
11 than there are by license holders and deer tagging holders.

12 The fishery resource, it's going downhill in a nose
13 dive.

14 MR. WHEELER: Senator, development and drought in
15 the state have created severe impacts upon fisheries habitat,
16 and as a result of the downwards spiral, fewer people are
17 fishing; we have less revenue; we have less revenue, we have
18 less ability to protect the habitat.

19 SENATOR MELLO: Right.

20 Thank you.

21 CHAIRMAN ROBERTI: Any other questions?

22 Is there anyone in the audience in support?

23 MR. PALMER: Thank you, Mr. Chairman, Members of
24 the Committee.

25 I'm Mark Palmer. I'm Conservation Chairman of the
26 Mountain Lion Foundation.

27 We've very much in support, and I think I speak for
28

1 the entire environmental community in California in support
2 of Doug Wheeler.

3 Doug has some excellent credentials before him, and
4 he's had experience with these kinds of issues before him.
5 He's shown a balance and an interest in the economic side of
6 things, which is heartening to see and something that I hope
7 we can continue to achieve, that kind of balance between
8 resource protection and resource use that protects our
9 economy. At the same time, he's been very open, and he has
10 some very, very exciting ideas, such as Resourceful
11 California, coming forward.

12 I would urge your vote for him. Thank you.

13 CHAIRMAN ROBERTI: Thank you very much.

14 MR. MERAL: Mr. Chairman, Members, Jerry Meral with
15 the Planning and Conservation League.

16 The office of Resources Secretary has had some
17 remarkable and talented individuals in the past: Hugo
18 Fisher, Bill Warren, Ike Livermore, Claire Dedrick, Huey
19 Johnson.

20 We are pleased to see that tradition continue in
21 the appointment of Mr. Wheeler as Resources Secretary. We
22 believe his training and background are ideal for this
23 position, and we would thank the Governor for making such an
24 outstanding appointment and giving us someone that we can
25 once again work with in this very important office.

26 CHAIRMAN ROBERTI: Thank you very much.

27 Is there any opposition in the audience?
28

1 SENATOR CRAVEN: Move Mr. Wheeler's nomination to
2 the Floor.

3 CHAIRMAN ROBERTI: The motion is before us by
4 Senator Craven to recommend the nomination to the Floor.

5 The Secretary will call the roll.

6 SECRETARY WEBB: Senator Beverly.

7 SENATOR BEVERLY: Aye.

8 SECRETARY WEBB: Senator Mello.

9 SENATOR MELLO: Aye.

10 SECRETARY WEBB: Senator Petris. Senator Craven.

11 SENATOR CRAVEN: Aye.

12 SECRETARY WEBB: Senator Roberti.

13 CHAIRMAN ROBERTI: Aye.

14 The vote is four to zero; confirmation is
15 recommended to the Floor.

16 Congratulations.

17 MR. WHEELER: Thank you, Senators, thank you all.

18 [Thereupon this portion of the
19 Senate Rules Committee hearing
20 was terminated at approximately
21 2:40 P.M.]

22 --oo0oo--
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24
25
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27
28


CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of May, 1991.


EVELYN J. MIZAK
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

EDWARD W. HUNT, Member
Commission on Peace Officer Standards and Training

SENATOR KEN MADDY

NORMAN C. BOEHM, Executive Director
Commission on Peace Officer Standards and Training

RONALD D. LOWENBERG, Chairman
Commission on Peace Officer Standards and Training

D. C. OGAN, JR., Chief Investigator
Fresno County District Attorney's Office

INDEXPage

Proceedings 1

Governor's Appointees:

EDWARD W. HUNT, Member
Commission on Peace Officer Standards
and Training 1

Introduction by SENATOR MADDY 2

Questions by CHAIRMAN ROBERTI re:

POST's Review of Training since
Rodney King Incident 3

Responses by NORMAN BOEHM, Executive Director
Peace Officer Standards and Training Commission,
and RONALD LOWENBERG, Chairman, Peace Officer
Standards and Training Commission 3

Potential for Accreditation 4

Series of Informational Sessions 4

Commission's Response to ACR 58 5

Approach to Cultural Awareness Training 6

Questions by SENATOR PETRIS re:

Representation of Minorities and
Lower Ranks on Commission 6

Advisory Committee Appointments 8

Representation of Rank & File 9

Motion 10

Questions by SENATOR PETRIS re:

Charge of Unfair Treatment of Employees 11

Investigator Falsifying DMV
Document 11

Reinstatement by Civil Service
Commission 12

INDEX (CONTINUED)

Plea Inadmissible	12
Facts before Civil Service Commission Hearing	13
Response by D.C. OGAN, Chief Investigator, Fresno County District Attorney's Office	14
Charge of Sexual Harassment	15
Opposition from Deputy Sheriffs Association	15
Formation of Separate Bargaining Unit for Senior Investigators	16
<u>Lybarger</u> Warning	17
Refusal to Prosecute	20
Creation of New Bargaining Unit for Investigators	21
Charge of Systematic Retaliation	22
Sheriff's Work Stoppage	24
Position of Employee who Falsified Documents	24
Difference in Pay between Sheriffs and Investigators	25
Attitude of Deputy Sheriffs Association	26
Committee Action	27
Termination of Proceedings	27
Certificate of Reporter	28

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: The next item on the agenda is the appointment of Mr. Edward W. Hunt, Member of the Commission on Peace Officer Standards and Training.

We had originally intended to use your confirmation as an attempt to delve into the entire question of POST standards and peace officer training. Unfortunately, the budget crisis has precluded our being able to develop that kind of hearing, or the use of that great an amount of time as this would warrant, but we do still intend to do it. We welcome your cooperation and the other members of POST.

MR. HUNT: Absolutely, anything I can do for you.

CHAIRMAN ROBERTI: Very good.

Now we'll ask you what we ask all the Governor's appointees, and that is why you feel you're qualified to assume this position?

MR. HUNT: Well, I want to first thank you for the opportunity to come and appear before you.

I would also like to apologize for the way I sound. I've had this -- I don't know what you'd call it, but some kind of flu that seems to hang on forever and ever.

CHAIRMAN ROBERTI: We know it well.

MR. HUNT: But at any rate, I'd like to first say that in thinking about what I was going to say to you today, I didn't know whether it was appropriate to talk about my education and background and the like, and I have elected not to

1 do that. I presume if you have any questions, you'll ask me.

2 But I want to say that since I have become a lawyer,
3 which was 16 years ago, approximately, I've spent all but two
4 and a half years of that in law enforcement. I was a deputy
5 district attorney for five years, approximately, and during that
6 time I supervised the first Narcotic Task Force that was
7 organized by through the Bureau of Narcotic Enforcement for the
8 state.

9 I was in private practice for two and a half years,
10 and I have just been elected to my third term as the District
11 Attorney in Fresno. I'm also a member of the Air Force Reserve
12 in the office of Special Investigations.

13 I'm interested in the POST Commission and certainly
14 the training of officers for a number of reasons. All of you
15 know that if policemen aren't trained right, prosecutors' jobs
16 get significantly more difficult. Four of my family are or were
17 police officers, and I have a vested interest in continuing that
18 reputation.

19 California has a reputation for training the finest
20 policemen nationwide, and I'd like to be part of that continued
21 process.

22 Thank you very much.

23 CHAIRMAN ROBERTI: Thank you.

24 Senator Maddy.

25 SENATOR MADDY: Mr. Chairman and Members, I just
26 wanted to -- I meant to be here in time to introduce Mr. Hunt
27 and highly recommend him to the Rules Committee for this
28

1 appointment. Unfortunately, we're dealing with a new committee
2 I have, the Insurance Committee, and the budget.

3 I think Mr. Hunt has outlined his background
4 experience. I can say from his reputation and credibility
5 standpoint that he would be an outstanding candidate. I just
6 wanted to endorse him and apologize for not being here earlier,
7 both Mr. Hunt and the Members of the Committee, and I strongly
8 recommend that he be approved.

9 CHAIRMAN ROBERTI: Thank you, Senator.

10 In view of the problem in Los Angeles with the Rodney
11 King incident, has POST started a review, engage in any review,
12 of training requirements, or any modifications to the program?
13 What has POST done since then?

14 MR. HUNT: I believe that the Director of POST is
15 here and could probably answer that question better than I.

16 However, anyone who saw that video tape has done
17 significant thinking about it. Certainly it's an issue that we
18 should address forthright.

19 CHAIRMAN ROBERTI: Very good.

20 Why don't we just do a little bit of questioning,
21 since the opportunity is before us.

22 As I was mentioning, Mr. Hunt, in light of the King
23 incident, what has POST done as far as reviewing standards and
24 reviewing its program?

25 MR. BOEHM: My name is Norman Boehm. I'm Executive
26 Director of the POST Commission.

27 Over the years, the Commission's established itself
28

1 as constantly being willing to look at, innovate, change,
2 improve. We think, despite some negative things going into it,
3 that we still have in many regards the best training program in
4 the country, but there is lots of room for improvement.

5 Any time an incident such as the Rodney King event
6 occurs, it causes the Commission to take a careful look at its
7 training programs, how it goes about it, what things need to be
8 changed to improve it.

9 The Chairman of the Commission is here. The
10 Commission at its last meeting a week or so ago took action to
11 do two things. One of them is to take a look at the potential
12 for accreditation, whereby departments would voluntarily
13 establish a set of appropriate operations and procedures for the
14 operating of their department which would qualify them for
15 accreditation recognition. This would be done under the
16 auspices of the POST Commission.

17 The second thing that the Commission has done is, the
18 Chairman appointed a committee consisting of Chief Bob Wasserman
19 as the chairman, other members of the Commission, and members of
20 the Advisory Committee, which we advised you on earlier, to hold
21 a series of informational input sessions at four locations in
22 the state: San Diego, and the greater L.A. Basin area, and San
23 Jose, and then Sacramento. Invite law enforcement and other
24 responsible community groups to make comments as an input to
25 find out what exactly do they see as the problems and the needs.
26 So that we're talking not only law enforcement, but to other
27 responsible people in the community as well. Then to work
28

1 through that through a series of workshops, and finally a
2 symposium so that directions can be established with law
3 enforcement, an agreement achieved, of what changes might be
4 done.

5 The Senate may be aware that recently the Commission
6 acted on a -- in response to ACR 58 to take a look at training.
7 We are concerned that there may be a lot of training where
8 people just sit in classrooms, hours and hours on end. We have
9 over 7 million training hours a year in California. And the
10 thought was, if we can make some improvements in the
11 effectiveness of that training, even a one percent increase
12 improvement represents 70,000 hours; and 10 percent, of course,
13 is 700,000 hours. Now, if we can make some changes, for
14 example, through some cognitive training areas in the areas of
15 -- by use of technology, we can take those savings and have more
16 one-on-one interpersonal kinds of training made available;
17 whereas now, we're pretty much obligated to classroom training
18 as pretty much the mode. And that's something we've inherited
19 over a period of time, and we're not convinced that is always
20 the most effective way.

21 So, what we want is a balance of a lot more
22 interpersonal kind of training. We want to balance that to make
23 that available through the use of technology and the cognitive
24 kinds of things, the more routine kind of training, where
25 trainees have the opportunity to kind of self-guide themselves
26 through those kinds of training that can be self-guided.

27 The Commission is in the midst of looking at --
28

1 working on the Boatwright bill. We think we're going to have a
2 wonderful, very unique, and very innovative approach to cultural
3 awareness training, and minorities and cultures through -- in a
4 three-tiered system, which begins with training of the chief
5 officer. And then through training of the in-service people in
6 the departments, who then will organize training programs for
7 the officers and the minorities and cultures in that community,
8 where they'll get together and resolve some things. So, they'll
9 sit across the table, or in whatever setting that they're
10 sitting in, to work together.

11 So, I think the Commission, Mr. Chairman and other
12 Members of this Committee, has been very responsive. When
13 occurrences come up, such as the most recent one, to attentively
14 and aggressively and assertively try to be part of the solution
15 to help continually make things better.

16 The Commission is not static. We're rather very
17 dynamic, and that's skipping over some of the more recent
18 highlights of what the Commission has been doing.

19 CHAIRMAN ROBERTI: Senator Petris.

20 SENATOR PETRIS: That sounds like a great program
21 response to the situation that happened there.

22 Wouldn't the Commission be more sensitive, and isn't
23 it likely to do a better job, if there were some representation
24 on it, number one, from the lower ranks, and number two, from
25 Hispanic and black persons in the law enforcement field?

26 I see the line up. There isn't one black person on
27 the whole thing. There's one woman who happens to be Hispanic,
28

1 so that's a double minority coverage there. But apart from
2 that, everybody's a male Caucasian.

3 With the very large number of minority people we have
4 in law enforcement around this state now, especially compared to
5 what it used to be, there isn't a community that doesn't have
6 some representation.

7 Of course, that's not your problem. You don't do the
8 appointing.

9 But it just seems incredible to me that after all
10 these years, we still have a make-up that's that much out of
11 balance.

12 MR. BOEHM: I'm sure the Chairman has something on
13 that.

14 Recently, and speaking for the Commission, as I
15 mentioned the Advisory Committee, the Commission has asked the
16 constituent organizations of its Advisory Committee, who
17 nominate people to the Commission for appointment, to pay
18 special attention to minorities. And we hope that they will do
19 that more and more.

20 SENATOR PETRIS: What's the process? They nominate?

21 MR. BOEHM: They nominate to the Commission. For
22 example, PORAC and CAUSE may nominate --

23 SENATOR PETRIS: Who makes the appointments?

24 MR. BOEHM: The Commission would, in that case, make
25 the appointments to the Advisory Committee.

26 SENATOR PETRIS: To the Advisory Committee.

27 MR. BOEHM: The Commission itself is gubernatorial
28

1 appointments, except for the Attorney General.

2 Then, in addition to that, any time we have a
3 particular event going on -- for example the minority and
4 cultural awareness training consists of 80-90 percent minorities
5 represented across the board, some of them from Legislators'
6 staff, so we have everybody represented on that.

7 So, we're sensitive to that, I think, carefully. To
8 the extent that we can, we're trying to be sensitive to that.

9 MR. LOWENBERG: I'd like to echo that comment,
10 Senator.

11 I think the Commission for some time now has been
12 talking about that very issue.

13 I just want to assure you that we are in fact
14 sensitive to it. As Dr. Boehm indicated, we've tried as best we
15 could on one occasion, or one set of circumstances, through the
16 Advisory Committee, to accomplish that. We have, in the last
17 few years, had the ability to appoint more women to the Advisory
18 Committee, and I think that's kind of begun to set the tone.

19 So, we are very sensitive to that, and we appreciate
20 you bringing that up. It'll help support our position to
21 continue to do that.

22 SENATOR PETRIS: I think we need to relay the message
23 to the appointing authority. Governor Wilson hasn't appointed
24 anybody yet. You're a Deukmejian appointee; may be the last
25 one, I guess, chronologically.

26 MR. BOEHM: Senator Petris, as to your question about
27 rank and file, we try hard to keep rank and file in the middle
28

1 of all things. In fact, everything the Commission does really
2 focuses on the individual officer at the field level. Even
3 supervisory and executive training really is for the intent of
4 focusing on the officer.

5 We have had, for a long time, representation on the
6 Commission itself, a rank and file person who, in one instance,
7 was the Chairman, and then most recently Vice Chairman.

8 SENATOR PETRIS: You don't have anybody below the
9 rank of sergeant.

10 MR. BOEHM: There is most recently Carm Grande, San
11 Jose POA, was Vice Chairman. He resigned from the Commission,
12 and the Governor has yet to make a replacement.

13 SENATOR PETRIS: You've got an opening there. He was
14 a sergeant.

15 MR. BOEHM: He was an officer, a police officer.

16 SENATOR PETRIS: And now you have one sergeant;
17 that's it.

18 MR. BOEHM: Well, that's the slot that's open, and we
19 would await the Governor's appointment for his replacement.

20 Oh, the previous Governor appointed -- we have
21 Commissioner Ed Maghakian, who was appointed by Governor
22 Deukmejian. He's appointed to the public member slot, but in
23 fact comes from rank and file representation from the Highway
24 Patrol.

25 SENATOR PETRIS: Was he on active duty then?

26 MR. BOEHM: Not at the time of his appointment.

27 SENATOR PETRIS: He's listed here as a district
28

1 safety manager.

2 MR. BOEHM: That is his current appointment.

3 SENATOR PETRIS: That's management-oriented. His
4 patrol days are in the past.

5 MR. MAGHAKIAN [from the audience]: Senator, I'm also
6 Director of the California Association of Highway Patrol at the
7 time.

8 SENATOR PETRIS: Well, that sounds better. Gets you
9 a little closer. Thank you.

10 CHAIRMAN ROBERTI: Any other questions?

11 Thank you very much for helping us out there.

12 I don't have any other questions of Mr. Hunt. We've
13 let you off easy.

14 We do have to ask for opposition. Is there any
15 opposition in the audience?

16 SENATOR CRAVEN: Move Mr. Hunt's confirmation to the
17 Floor.

18 CHAIRMAN ROBERTI: Senator Craven moves Mr. Hunt's
19 confirmation to the Floor.

20 Is there any further discussion or debate?

21 SENATOR PETRIS: May I ask some questions?

22 CHAIRMAN ROBERTI: Senator Petris.

23 SENATOR PETRIS: We have a lot of letters of support
24 from all over the -- well, not all over the place, but from
25 people who know you; that's Fresno. But we also have a couple
26 that are in opposition I wanted to ask you about.

27 One of them is a county employee from a different
28

1 department who believes that, due to a lot of problems that have
2 arisen under your command there both internally and externally,
3 some of which have been highly publicized in the local press,
4 that it would be a mistake to make the appointment.

5 I'd like you to comment on the points that are
6 raised. One is the charge of unfair treatment of employees,
7 including people who are in law enforcement positions.

8 Another one is sustained charges of sexual harassment
9 by close employees. I don't know what "sustained" means. I
10 don't know whether it means continuous over a period of time, or
11 has been sustained by some reviewing authority.

12 And the building of barriers between the City and the
13 County personnel and departments which are characterized as
14 political.

15 That's three things. Do you care to comment on any
16 one of those?

17 MR. HUNT: Well, they're just a tad vague, but would
18 you read the first one again for me?

19 SENATOR PETRIS: Yes, the first one says unfair
20 treatment of employees, including law enforcement positions.

21 MR. HUNT: I really don't know what that means.

22 There was an occasion where one of my investigators
23 was charged with falsifying a DMV document, two of them, under
24 penalty of perjury to void paying use tax, believe, for the
25 vehicle that he had bought in Michigan.

26 This investigator was in our Family Support Division
27 and had been there for ten years. He -- his job description,
28

1 basically, was that he investigated people who falsified
2 documents under oath with the intent to steal money from the
3 state. And I fired him for it.

4 The Attorney General filed a complaint against him.
5 He pled nolo contendere to it, so the Civil Service Commission
6 never heard about the plea and they reinstated him.

7 Now, that could be what they're talking about. But
8 in my view, when a peace officer in the State of California
9 commits perjury, or signs a document under oath that he knows to
10 be false, he doesn't deserve to be a peace officer.

11 SENATOR PETRIS: Shouldn't this have been brought to
12 the attention of their personnel people on the question of
13 reinstatement?

14 MR. HUNT: Well, there was no --

15 SENATOR PETRIS: It seems to me that somebody in that
16 Commission was lacking some very, very important information
17 when they made that judgment.

18 MR. HUNT: Unfortunately, Senator, the law is that if
19 you plead nolo contendere, or no contest, it is not admissible in
20 any other hearing against you.

21 SENATOR PETRIS: You mean none of the facts under the
22 case are admissible?

23 MR. HUNT: They basically heard the facts. They
24 didn't hear that he pled to the offense.

25 SENATOR PETRIS: Well, I don't understand that. I
26 think we need Senator Davis to come back here and put in another
27 bill.
28

1 I understand in certain situations you can't use a
2 plea to prove a case.

3 MR. HUNT: In any civil action that has a nolo plea.

4 SENATOR PETRIS: You can certainly bring in the same
5 facts. Are you telling me that the information was brought to
6 the attention of the Civil Service Commission that he committed
7 this perjury for his own personal purchase of an automobile,
8 falsely declared this and that, and they reviewed it and said,
9 "That's okay. We'll give you another chance"? Is that what
10 happened?

11 It doesn't matter what the plea is. I was wondering,
12 you know, what are the facts that came before the Board?

13 MR. HUNT: The facts that came before the Board are
14 those that I just told you about.

15 They did not hear that he admitted to the charge.

16 SENATOR PETRIS: Did he deny the charge before the
17 Personnel Board?

18 MR. HUNT: The rules were such that you couldn't
19 bring up the issue as to whether he admits or denies it. The
20 Civil Service Commission heard the whole thing.

21 SENATOR PETRIS: Were you at the hearing?

22 MR. HUNT: I was there at part of the hearing. No,
23 not all of it. I was told this.

24 SENATOR PETRIS: Were you a witness?

25 MR. HUNT: I was a witness, yes.

26 SENATOR PETRIS: All right.

27 So, some how, these basic facts were brought to the
28

1 attention of the Commission.

2 MR. HUNT: That's right.

3 SENATOR PETRIS: I suppose they asked him to respond.

4 MR. HUNT: I don't know that. I wasn't there when he
5 testified. I'm assuming that they did.

6 SENATOR PETRIS: He must have denied it.

7 MR. HUNT: Apparently. I think his story was that --
8 that he had -- I think his story was that he had been told by
9 DMV officials that that's the way to fill out this particular --
10 these particular forms and the like.

11 This is my Chief of Investigation.

12 SENATOR PETRIS: Can you help us on that?

13 MR. OGAN: D. C. Ogan, Chief Investigator with the
14 D.A.'s Office.

15 I sat through the entire hearing. I don't know that
16 he ever -- he admitted that he had made a mistake, but he tried
17 to lay it off on DMV. But they heard the entire testimony; his
18 testimony that he had, in fact, signed his name.

19 SENATOR PETRIS: How do you account for that, then?

20 MR. OGAN: Well, I don't have any control over the
21 Civil Service Commission.

22 The response that I heard from the Civil Service
23 Commission is that that's common practice. They didn't feel
24 like -- he was off the job and he hadn't done anything wrong.

25 SENATOR PETRIS: Will everybody in this room who's
26 done that please raise your hand? I don't see anybody raising
27 his hand.
28

1 This "common practice" of falsifying a DMV document,
2 who said that on the Commission? Can you give me the name or
3 names?

4 I can't believe that a citizen serving at that level
5 would assume or even say publicly that this kind of misconduct
6 is common practice among all of us.

7 MR. HUNT: I believe his name was Marcus, I believe.
8 He's no longer on the Commission, but I can't say that for
9 certain. I just don't recall.

10 SENATOR PETRIS: Okay. I appreciate your clarifying
11 that.

12 MR. HUNT: The sexual harassment comment, is that the
13 next one, sir?

14 SENATOR PETRIS: Yes.

15 MR. HUNT: There was an allegation by two women in
16 our organization that they had received unwelcomed comments and
17 advances by an Assistant Chief of Investigations from our
18 department. We investigated it, and he is no longer employed at
19 the District Attorney's Office.

20 SENATOR PETRIS: You personally have not been
21 accused?

22 MR. HUNT: No, not that I know of; not today.

23 SENATOR PETRIS: Take one day at a time, I guess.

24 MR. HUNT: Absolutely, sir.

25 SENATOR PETRIS: We also just received a letter from
26 the President of the Deputy Sheriffs Association expressing
27 strong opposition.
28

1 Do you have some kind of beef going with that
2 organization?

3 MR. HUNT: Well, I'll tell you --

4 SENATOR PETRIS: I tell you that because we all know
5 that sometimes organizations get into fights and --

6 MR. HUNT: Yes, sir.

7 SENATOR PETRIS: -- policy differences sometimes
8 spill over into the personal arena when they shouldn't.

9 MR. HUNT: Right.

10 Well, let me tell you what I believe that's about.

11 SENATOR PETRIS: They're accusing you of undermining
12 the efforts of the deputies to do their job properly.

13 MR. HUNT: I don't know what that's about, but let me
14 tell you that I was instrumental, or at least was a participant,
15 in arranging for my senior investigators to form their own
16 bargaining committee.

17 The president of my senior investigators is here
18 right now, Bill Layman.

19 The circumstances are that from 1972, when the Deputy
20 Sheriffs Association was formed, until 1989, the pay for D.A.
21 investigators went from an amount that was almost the same as
22 lieutenants in the Sheriff's Department to an amount that was
23 less than sergeants in 1989.

24 When challenged because they hadn't been represented
25 effectively, the response from the Deputy Sheriffs Association
26 was that they didn't know why our investigators were
27 complaining; they already made too much money.
28

1 Well, it seems to me that if you have an organization
2 that is not representing people who are paying dues, then you
3 ought not to be a member of that organization. I was asked to
4 contact the County Administrative Officer and ask if we could
5 have another bargaining unit formed by and through for our
6 investigators. We were able to do that, and they now represent
7 themselves.

8 If in fact that's what they're talking about, I plead
9 to it, because I absolutely did that.

10 SENATOR PETRIS: I can't tell from this.

11 They do have a couple of examples having to do with
12 actual law enforcement activity. Maybe that'll be more
13 specific.

14 MR. HUNT: All right.

15 SENATOR PETRIS: I'm not familiar with Lybarger.
16 How's that pronounced? Is that Lee or Ly?

17 MR. HUNT: Ly-bar-ger.

18 SENATOR PETRIS: Is that similar top the Miranda?

19 MR. HUNT: It is similar.

20 SENATOR PETRIS: Well, the allegation is that your
21 persistent attempts to undermine the lawful efforts of the peace
22 officers when they exercise their right under the law -- no, I
23 take it back. That's a different one.

24 On the Lybarger, the attorney of the organization had
25 been called out to a shooting about 2:00 o'clock in the morning,
26 and he was advised by one of your representatives that the D.A.
27 would no longer agree to have the warning routinely given to
28

1 officers. It says:

2 "In fact, the D.A.'s representative
3 stated, the administration of a
4 Lybarger warning would result in a
5 D.A.'s decision not to prosecute the
6 subject in question, who had
7 initiated the shooting by pointing a
8 weapon at several peace officers who
9 were serving a warrant."

10 So, they had a big, long discussion throughout the
11 evening, and the D.A. refused to budge,

12 "... as a result of which the
13 officers decided to proceed without
14 the benefit of a ... warning."

15 MR. HUNT: All right, let me address that
16 specifically.

17 When I was elected District Attorney, we formed
18 what I call an Officer Involved Shooting Team. What that
19 basically is, is a criminal investigation into possible --
20 the Shooting Team was designed to do a parallel criminal
21 investigation at the same time that the Internal Affairs
22 investigations were being conducted by the involved
23 department. Our theory was that we were going to have to
24 review the conduct of the officer anyhow. It was better for
25 us to be on the scene and walk through the shooting scene to
26 see what happened, when it happened, and the like, and to be
27 able to make a judgment with fresh information rather than
28

1 stale.

2 Lybarger is a case that says that during an
3 Internal Affairs investigation, not criminal but an Internal
4 Affairs investigation, an officer may not refuse to answer
5 questions to the Internal Affairs investigator on the basis
6 that it could be used against him criminally. And so,
7 Lybarger says nothing that you say in the I.A. investigation
8 will be used against you criminally.

9 SENATOR PETRIS: It's the reverse.

10 MR. HUNT: Yes.

11 If we are present during that I.A. investigation,
12 doing a parallel criminal investigation, and Lybarger is read
13 to the involved officer, that is tantamount to granting him
14 immunity before you know what he's going to say.

15 There's not a policeman alive that would do that,
16 and we're not going to do it either.

17 The other thing that you need to understand is that
18 we go to these shooting only when we're invited. Only when
19 the involved agency invites us. Not -- we don't go out there
20 and impose ourselves on them.

21 The last thing is, is that this is the only time
22 that the issue has ever arisen that I can recall since I've
23 been the District Attorney. This arose because there were
24 two deputy sheriffs who went through the door serving the
25 search warrant. The accused or the suspect brandished a
26 weapon at them, and they shot him. So, they are the only
27 witnesses to the entire event.
28

1 If they don't tell us what the suspect did, we
2 can't prosecute it. But we can't be present and allow them
3 to explain it after Lybarger has been read because then it's
4 immunity.

5 So, this is just not an accurate representation of
6 what occurred. So, that's my explanation.

7 SENATOR PETRIS: Well, it says here they proceeded
8 without the --

9 MR. HUNT: They did, and we prosecuted the
10 suspect, and we have prosecuted every suspect. There has
11 never been an occasion that I know of that we failed to
12 prosecute anybody who has assaulted a policeman in Fresno
13 County while I've been D.A.

14 SENATOR PETRIS: I don't understand this. It says
15 "the officers decided to proceed without benefit". Does that
16 mean some officer in your shop, rather than the law
17 enforcement side?

18 MR. HUNT: I believe they had their lawyer there.
19 You know, when there is a controversy, they bring the lawyer
20 for the Deputy Sheriffs Association on scene. And I believe
21 he told them not to do it. There is -- the person who they
22 refer to here --

23 SENATOR PETRIS: They claim here that you refused
24 to prosecute.

25 MR. HUNT: That is not true.

26 SENATOR PETRIS: And it says that that evening that
27 their attorney, I guess the Association attorney, met with
28

1 Mr. Dennis Beck --

2 MR. HUNT: Right, he was the assistant.

3 SENATOR PETRIS: -- who was the Chief Deputy to
4 you, and attempted to get the D.A.'s office to change its
5 policy, particularly with respect to its refusal to
6 prosecute.

7 "Mr. Beck personally reiterated that
8 policy and said the D.A. had no
9 intention of changing. At that
10 time, further discussion seemed
11 fruitless."

12 So, this suggests that there was no prosecution.

13 MR. HUNT: That's not true. The officers did agree
14 to talk to us, and we did prosecute the suspect.

15 But the situation and the entire rationale is as
16 just explained it to you. If we are invited to be present at
17 an -- and investigate a possible criminal conduct involving
18 an officer-involved shooting, if Lybarger is read, we have to
19 leave or we grant whoever is speaking immunity, and I will
20 not do that.

21 SENATOR PETRIS: Who was prosecuted there? The one
22 that was --

23 MR. HUNT: That was brandishing the gun and the one
24 who was shot. That's my best recollection.

25 SENATOR PETRIS: Can you go back to that other
26 situation involving the creation of a new bargaining unit?
27 How did that come about?
28

1 MR. HUNT: That came about because from 1972 --
2 well, first of all, the Deputy Sheriffs Association was
3 formed in 1972. The D.A. investigators became members of the
4 Deputy Sheriffs Association. At the time that it was formed,
5 the D.A. investigators made virtually the same wages as
6 Sheriff's lieutenants. From 1972 until 1989, I believe, the
7 pay of D.A. investigators declined to less than that of
8 Sheriff's sergeants.

9 Whenever the issue was raised, the Deputy Sheriffs
10 Association made repeated comments that they don't know why
11 the D.A.s are complaining; they already make too much money.
12 As a matter of fact, the man who signed this particular
13 letter, Tom O'Brien, told Bill Layman at a meeting a year or
14 so ago almost verbatim what I've just told you.

15 So, whenever -- these folks came to me and asked if
16 I would contact the CAO and ask if they could form their own
17 unit. I did so, and I'd do it again in a heart beat, because
18 when you have an organization that does not represent your
19 people, and you're a department head, you'd better very well
20 do it yourself because it's unfair for them not to be
21 represented.

22 SENATOR PETRIS: So, you acted at the request of
23 the people who wanted the change?

24 MR. HUNT: Yes, sir, I did.

25 SENATOR PETRIS: The last point they make is
26 systematic retaliation against anybody who tries to assert
27 his rights within the department.
28

1 MR. HUNT: The only thing that I can think of that
2 could possibly relate to that is that we transferred a number
3 of senior investigators in and out of supervisory positions.
4 We did that as a matter of training because, as you know,
5 Fresno like other counties has no money for training
6 policemen and administrative things that aren't POST
7 reimbursed.

8 We had issued memoranda at least a year prior to
9 the incident where my investigator falsified a document that
10 we were going to transfer these investigators to get them
11 some administrative experience.

12 We transferred a person who testified on behalf of
13 this investigator at the Civil Service Commission about a
14 year after the issue was resolved with this investigator.

15 SENATOR PETRIS: Along with others?

16 MR. HUNT: Along with others and after --

17 SENATOR PETRIS: There wasn't any individual
18 singled out who had spoken up?

19 MR. HUNT: No, sir. We had spoken about
20 transferring a number of people. We have done that. We've
21 probably transferred five or six in the last two years
22 specifically to allow folks to get training so that they can
23 legitimately say they've had some administrative experience.

24 I have -- I can document the time frames within
25 which this occurred. I can document, of course, and I have
26 with me memoranda notifying the entire Investigative Bureau
27 of our intentions and the time frame within which this
28

1 occurred.

2 This is specifically -- let me say one other thing
3 while I'm speculating.

4 The deputy sheriffs in Fresno had a work stoppage,
5 if you want to call it that, where they called in sick, the
6 entire shift. Subsequently, they were filling out their time
7 sheets that they were all sick. It was impossible for them
8 all to be sick at one time, unless they've got what I've got,
9 then everybody can be sick.

10 But our position was that if you're not sick, you
11 can't say you're sick because that's a false statement. So,
12 I informed the Deputy Sheriffs Association that even though I
13 might be sympathetic with their plight with the County, and
14 with their inability to get what they felt was an adequate
15 wage, they could not violate the law, and I could not condone
16 it. And if they did, I'd prosecute them. And I will do that
17 again.

18 And I believe that all of this is generated because
19 I refused to do what I think is fundamentally wrong for a
20 select special interest group. And I won't do it.

21 SENATOR PETRIS: Let me ask about the investigator
22 who falsified the documents again. Is he still working
23 there?

24 MR. HUNT: I don't have any choice. The Civil
25 Service Commission reinstated him.

26 SENATOR PETRIS: How long ago was that.

27 MR. HUNT: About a year and a half ago. I had to
28

1 give him back his badge and gun, and I was going to stick him
2 in the corner and give him a little desk and no phone, but I
3 found out he could sue me personally for it, so I decided it
4 wasn't worth that.

5 SENATOR PETRIS: That would probably be
6 retaliation.

7 MR. HUNT: Probably would. He deserves it.

8 SENATOR PETRIS: I won't keep you much longer.

9 MR. HUNT: That's no problem. I have lots of
10 chloroseptic stuff, so I'm here as long as you need me.

11 SENATOR PETRIS: Can you explain a little more the
12 difference in pay between those two groups, investigators and
13 the deputies? Isn't that a little more structured? Who
14 makes those decisions, the Board of Supervisors?

15 MR. HUNT: Right, but that's --

16 SENATOR PETRIS: What do they do? They give a
17 certain group a pay raise and ignore the others, or did they
18 cut somebody's pay and raise somebody else's?

19 MR. HUNT: During the negotiations for the
20 contracts, certain issues are placed on the table. And our
21 immediate past County Administrative Officer, he and I agreed
22 that our investigators would be paid on a same -- on a parity
23 level with sergeants.

24 Without notice to anybody, the Deputy Sheriffs
25 Association took that issue off the table. When you are
26 represented by a bargaining unit, if a contract is signed or
27 a memorandum of understanding is signed by that group, you're
28

1 bound by it.

2 Therefore, every year for 18 years or so, the pay
3 of D.A. investigators continued to erode. And during the
4 subsequent --

5 SENATOR PETRIS: Was that after that issue was
6 taken off the table?

7 MR. HUNT: No, sir. That was just in 1986 or so.
8 But from 1982 until '89, when my guys got out, there wasn't
9 the -- there wasn't the advocacy necessary to get that done.

10 And the attitude in the Deputy Sheriffs
11 Association, I think, is spelled out here by a letter from
12 Ron Adolph, who is a sergeant in the Deputy Sheriffs
13 Association, in a 1985 newsletter, and it says, if I may:

14 "I understand that D.A.
15 investigators were not real happy
16 with our representation. It seems
17 they want parity pay with sheriff
18 sergeants. Pardon me for asking,
19 but what the hell for? Where were
20 the D.A. investigators when we
21 struck a few years back?"

22 By the way, none of my guys struck. They didn't believe
23 policemen had that right.

24 "It's hard to drum up a lot of
25 sympathy for a group of people who
26 have consistently failed to support
27 this organization."
28

1 It was exactly that kind of --

2 SENATOR PETRIS: Was he a deputy sheriff?

3 MR. HUNT: Yes, sir. He was a sergeant, and at the
4 time, he's the editor of the Deputy Sheriffs newsletter.

5 But that particular statement, I believe,
6 articulates as well as anything I could tell you the attitude
7 that existed, and that's precisely why I intervened on behalf
8 of my investigators.

9 SENATOR PETRIS: Okay, thanks very much.

10 CHAIRMAN ROBERTI: Is there opposition? Hearing
11 none, Senator Craven has moved confirmation be recommended to
12 the Floor.

13 Secretary will call the roll.

14 SECRETARY WEBB: Senator Beverly.

15 SENATOR BEVERLY: Aye.

16 SECRETARY WEBB: Senator Mello.

17 SENATOR MELLO: No.

18 SECRETARY WEBB: Senator Petris. Senator Craven.

19 SENATOR CRAVEN: Aye.

20 SECRETARY WEBB: Senator Roberti.

21 CHAIRMAN ROBERTI: Aye.

22 The vote is three to one; confirmation is
23 recommended to the Floor.

24 [Thereupon this portion of the
25 Senate Rules Committee hearing
26 was terminated at approximately
27 3:28 P.M.]
28

--oo0oo--


CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of May, 1991.


EVELYN J. MIZAK
Shorthand Reporter

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27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

ALSO PRESENT

DIANA MARSHALL, Member
Workers' Compensation Appeals Board

DON GREEN, Lobbyist
California Applicant Attorneys Association

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
DIANA MARSHALL, Member Workers' Compensation Appeals Board	1
Questions by SENATOR PETRIS re:	
Stress-related Injuries	1
Increase in Number of Stress Claims	2
Questions by SENATOR MELLO re:	
Voting Pro-worker on Board	2
Voting Philosophy	3
Efforts to Help with Backlog	4
Comments by SENATOR MELLO re:	
Anti-worker Bias of Board	5
Ethnic Balance on Board	5
<u>Witness in Opposition:</u>	
DON GREEN, Lobbyist California Applicant Attorneys Association	6
Conclusion by MS. MARSHALL	7
Motion	7
Committee Action	8
Termination of Proceedings	8
Certificate of Reporter	9

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: The next item is Item Three, Governor's Appointees appearing today, Diana Marshall, Member of the Workers' Compensation Appeals Board.

MS. MARSHALL: Good afternoon, Senators. I think this is my third time.

CHAIRMAN ROBERTI: We have seen Ms. Marshall before, so she has given us testimony.

Rather than go through that, her initial statement, are there questions? Then I would like to ask in the audience for proponents and opponents.

Yes, Senator Petris.

SENATOR PETRIS: One of the subjects getting more and more attention in the field of Workers' Comp. is stress-related problems, work-related problems due to stress.

Have you seen enough in your term there to form any conclusions as to whether there's a genuine need for expanding that to make sure they're covered, or for cutting back, either way?

MS. MARSHALL: I haven't seen enough, quite frankly, in a year. I've made decisions based on the evidence as to whether or not a stress claim appears to be industrially related as opposed to not industrially related.

I would tell you that the 1989 reform, that was one of the few substantive reforms, was in sort of a 10 percent threshold that an employee had to get over in terms of the

1 stress being industrially related before he could claim Workers'
2 Compensation benefits.

3 And we have not made any en banc decisions, nor have
4 we made any substantive large, you know, important panel
5 decisions. We simply are in that sort of mid-range period where
6 the cases are still developing below.

7 SENATOR PETRIS: Do you notice an increase in the
8 number?

9 MS. MARSHALL: I have not noticed an increase, no,
10 personally.

11 SENATOR PETRIS: Thank you.

12 CHAIRMAN ROBERTI: Senator Mello.

13 SENATOR MELLO: I have a question.

14 You've been serving now about 11 months, I guess?

15 MS. MARSHALL: Yes, I have.

16 SENATOR MELLO: In talking to some of the people who
17 monitor the activities of the Workers' Compensation Board, the
18 allegation is made that you're voting fairly much pro-worker, in
19 their opinion, and working more pro-worker than had been
20 expected.

21 Of course, this is the period of contemplation prior
22 to the confirmation hearing. This has happened to us before.
23 There's a lot of people I voted for on confirmation I'd like to
24 have it back, because once they get confirmed, boy, they're off
25 and running. They're doing their own thing, and we're powerless
26 as far as calling them back, even though there was a bill to
27 modify that at some point.
28

1 Do you think that your voting in the past 11 months
2 represents your philosophy, and that that type of voting will
3 continue during the balance of your term, which is five more
4 years?

5 MS. MARSHALL: I would say that I -- the only way
6 that I can honestly answer that is, I have not voted with a
7 conscious eye towards my confirmation process. I can just be
8 as honest with you as I can about that.

9 I have not kept inventory to see if the majority of
10 my decisions are either pro-worker or pro-defense industry. I
11 don't know personally that they are that.

12 I do give great deference to the trial judges'
13 decisions, I can tell you that, and I know I will continue to do
14 that, because it is the trial judge who has been able to judge
15 the credibility of the witness, both the defense witness and
16 employees, on the stand and has given a great deal of time and a
17 great deal of thought to the case by and large. And unless
18 there's a big substantive error in his reasoning or legal
19 reasoning, I will give great deference to that, no matter what
20 that decision is. I know I will continue to do that.

21 SENATOR MELLO: The second question is, I've been
22 complaining about it for many years, and that's the backlog in
23 the whole process. There's been from the former director, I
24 guess, of the Industrial Relations Department, there's been a
25 lacking -- the priority was to reform the system somehow, even
26 though they never came up with a reform plan. But then, in the
27 interim, positions for the administrative law judges and
28

1 staffing and all that have gone without being filled. The
2 backlog, once measured by feet, of unopened cases were
3 monumental.

4 What have you done in the last 11 months to help
5 speed that up, if anything?

6 MS. MARSHALL: Well, a couple of comments on that.

7 I know that during the last year, we have hired --
8 not we. Let me back up. It's the hiring of the administrative
9 -- the Workers' Compensation judges and the referees is largely
10 the purview of the Administrative Director, although we do
11 participate in some of the exams. But I -- in the year that
12 I've been there, I've noticed that there has been a great deal
13 of hiring of referees for the new 1989 reform, as well as
14 Workers' Compensation judges.

15 I know that we just gave -- the Department just gave
16 an exam for Workers' Compensation judges. I think there were
17 about 60 openings, and we had well over 250 candidates apply for
18 those openings. Interviews are going on right now. So, I'm
19 sure there'll be a wealth of candidates.

20 I know there is a great deal of impetus to get those
21 people out in the field and helping with that backlog.

22 Another comment that I would make is that, to the
23 extent we can, we do assist and work with the Administrative
24 Director and have been working with the new Director, who's just
25 been on board a month, Mr. Aubrey, in ways to -- the system is
26 now largely computerized. So, what we've been trying to do is
27 assist them in efforts, making sure the case numbers -- if a
28

1 case is already on file somewhere, that another district office
2 does not open up a duplicate file; that you immediately pull
3 that information from the computer so you can see where that
4 file is.

5 Sometimes you have an application filed in one area,
6 but a lien claimant has already filed in another. If you have a
7 master file number, you ease the transition of that paperwork.
8 And then, the judge at the time of his decision can have all
9 that paperwork in one place, which makes good common sense. And
10 that way, lien claimants don't then come back and have to jam
11 the system with their trying to get on calendar with their
12 complaints, and you can handle everything at once.

13 So, anything we can do to help that computer system
14 and the staff out in the district offices and the Board offices,
15 we -- I've been trying to do.

16 SENATOR MELLO: Quite frankly, I'm still getting
17 complaints.

18 I think the current Board has been appointed by
19 Governor Deukmejian. And under Mr. Rinaldi, I still get
20 complaints about the process. It's slow, and I think most of
21 the decisions made reflect an anti-worker attitude.

22 The last point I want to make, and Senator Roberti in
23 fact brought it up, is something I fully support, and that's
24 trying to bring the proper balance of ethnicity to all the
25 boards and commissions.

26 Looking over the list here, only John Oda is a member
27 of an ethnic group. All the others are in the category of being
28

1 Caucasians. I think that is one incident that we're not moving
2 towards balancing.

3 Right now, there's 30 percent of California's
4 population that's Hispanic, a growing Asian population. The
5 black population continues to play a major role, and yet we are
6 appointing boards that fail to reflect that kind of balance.

7 Thank you very much, Mr. Chairman.

8 CHAIRMAN ROBERTI: Thank you, Senator.

9 Is there anybody who wishes to come testify in
10 support? Opposition?

11 MR. GREEN: Very briefly, Mr. Chairman, Don Green, on
12 behalf of the California Applicant Attorneys Association.

13 We regret that we must continue our opposition to
14 this particular appointee. As you know, this is a very
15 important board to the practitioners to the injured workers.
16 There are only seven members. There are currently two vacancies
17 that have been vacant since January. There are two who are
18 serving who are presently before you for confirmation.

19 In the last eight years, under the Deukmejian
20 administration, the Board went way out of balance in terms of
21 its particular approach to these cases. It's our belief that
22 the Board is now and has been for sometime an employer-
23 dominated, carrier-dominated Board that acts accordingly. Rules
24 and regulations that have been adopted, in particular in
25 December of 1990, that were directly contrary to this
26 Legislature's action in the Margolin-Greene worker compensation
27 bill, are something that particularly rankle the members of the
28

1 Bar that I represent.

2 We are only asking for balance on this Board. We
3 have been in contact with the Governor's office. Unfortunately,
4 we can't even get the people that we submit or recommend
5 interviewed. We've got no hint; there's not any direct or
6 indirect indication that this Governor is going to be any
7 different with respect to balance on this Board than the last
8 Governor was.

9 For that, we regret that we have to continue to
10 oppose this nominee and urge that the nomination be held in
11 Committee.

12 Thank you.

13 CHAIRMAN ROBERTI: Thank you.

14 Is there anyone else who wishes to testify?

15 Ms. Marshall, you may conclude.

16 MS. MARSHALL: I'd just like to refresh everybody's
17 memory that I do have some labor support, that of the Public
18 Service Employees' Union, the Teamsters in Mr. Mello's district,
19 and Senator Greene's fine comments that I still appreciate so
20 much.

21 I have nothing further to add.

22 CHAIRMAN ROBERTI: Thank you.

23 Is there a motion?

24 SENATOR CRAVEN: Move.

25 CHAIRMAN ROBERTI: Senator Craven moves confirmation
26 be recommended to the Floor.

27 Secretary will call the roll.
28

1 SECRETARY WEBB: Senator Beverly.

2 SENATOR BEVERLY: Aye.

3 SECRETARY WEBB: Senator Mello.

4 SENATOR MELLO: No.

5 SECRETARY WEBB: Senator Petris.

6 SENATOR PETRIS: No.

7 SECRETARY WEBB: Senator Craven.

8 SENATOR CRAVEN: Aye.

9 SECRETARY WEBB: Senator Roberti.

10 CHAIRMAN ROBERTI: Aye.

11 The vote is three to two; confirmation is recommended
12 to the Floor.

13 MS. MARSHALL: Thank you.

14 [Thereupon this portion of the
15 Senate Rules Committee hearing
16 was terminated at approximately
17 2:12 P.M.]

18 --oo0oo--
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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of May, 1991.


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1 SENATE RULES COMMITTEE
2 STATE OF CALIFORNIA
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6 HEARING
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12 STATE CAPITOL
13 ROOM 113
14 SACRAMENTO, CALIFORNIA
15
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18 THURSDAY, JUNE 6, 1991
19

20 1:50 P.M.
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23
24

25 Reported by:
26

27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

ALSO PRESENT

MARGARET S. FILANTE, M.D., Member
Acupuncture Commission

ROBERT LEE HANNA, Member
Industrial Welfare Commission

JAMES S. STOCKDALE, Member
Unemployment Insurance Appeals Board

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
MARGARET S. FILANTE, M.D., Member Acupuncture Commission	1
Motion	1
Committee Action	2
Request by DR. FILANTE	2
Comment by SENATOR CRAVEN	2
ROBERT LEE HANNA, Member Industrial Welfare Commission	3
Motion	4
Committee Action	5
JAMES STOCKDALE, Member Unemployment Insurance Appeals Board	5
Motion	5
Committee Action	6
Termination of Proceedings	6
Certificate of Reporter	7

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Next is the appointment of
Dr. Margaret S. Filante, Member of the Acupuncture Committee.

Dr. Filante, first we want to start by apologizing
for having you come up here three times, I think it's been, at
our request. But thank you for coming, and we want to ask you
what we ask all the Governor's Appointees, and that is why you
feel you're qualified to assume this position.

DR. FILANTE: Yes, I understand. You're busy people,
too, and you're not as able to schedule as I am.

I guess I should tell you a little about me. I am --
have been a specialist in physical medicine and rehabilitation
since 1960 when I got my Board. I've been practicing in this
field since that time.

I got interested in acupuncture in about 1974, and
got my training in what would be now called a tutorial, since
there were no schools in California at that time.

I think that about covers.

CHAIRMAN ROBERTI: Very good.

Any questions of Dr. Filante?

SENATOR MELLO: I've known her for a long time. I
know she's highly qualified to do this and almost any other
task.

CHAIRMAN ROBERTI: I agree. You come well
recommended. There was a whole host of recommendations that we
respect.

1 Senator Mello moves the appointment of Dr. Filante to
2 the Acupuncture Committee.

3 Any discussion or debate? Is there any opposition?
4 Secretary, call the roll.

5 SECRETARY WEBB: Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Senator Mello.

8 SENATOR MELLO: Aye.

9 SECRETARY WEBB: Senator Petris. Senator Craven.

10 SENATOR CRAVEN: Aye.

11 SECRETARY WEBB: Senator Roberti.

12 CHAIRMAN ROBERTI: Aye.

13 DR. FILANTE: Could I make one more comment?

14 CHAIRMAN ROBERTI: Yes, please.

15 DR. FILANTE: I think it's very important, and I've
16 been on this Committee for awhile now, it's critical that you,
17 when you make you appointments, which are -- I think the Board's
18 all due up in January except me -- that these appointments
19 understand what they're getting into, and they're ethical and
20 understand what the function of such an agency is. Okay?

21 CHAIRMAN ROBERTI: Very good, thank you very much,
22 Doctor.

23 SENATOR CRAVEN: That statement is very appropriate
24 in that we've had some problems with members of that board doing
25 things that are -- to say unethical would be probably benign,
26 because they're worse than that. So, the Doctor's point is very
27 well taken.
28

1 Hopefully, we can surround you with a lot of real top
2 notchers.

3 DR. FILANTE: Thank you.

4 CHAIRMAN ROBERTI: The next appointment is the
5 appointment of Robert Lee Hanna, Member of the Industrial
6 Welfare Commission.

7 I don't know; this one's a tougher one to try to
8 swallow. Nevertheless, we'll give you a fighting chance.

9 Please tell us why you feel you're qualified to
10 assume this position.

11 MR. HANNA: Well, as a member of the Carpenters'
12 Union for 45 years, and full-time officer for some 32 years, a
13 lobbyist in this great house for 22 years, I felt that I've got
14 a general idea of what my position as far as labor
15 representative on the Commission would be. And I wasn't wrong
16 at all when I found out, when I started last November, that
17 unfortunately, there's not a full board, and there's nothing to
18 be -- really to be done.

19 There hasn't been another labor appointment to make
20 up the five-man Commission since -- for well over a year. So,
21 any major legislation or acts would have to come from a full
22 committee. Mainly -- mainly, our position would be on the
23 eight-hour day and minimum wage. We're in the middle of that
24 discussion right now.

25 I don't think anything can be done until the full
26 committee is in progress.

27 CHAIRMAN ROBERTI: Is there any question or is there
28

1 any opposition in the audience?

2 SENATOR CRAVEN: Move Mr. Hanna's confirmation.

3 CHAIRMAN ROBERTI: Senator Craven moves that
4 Mr. Hanna's nomination be recommended to the Floor for the
5 Industrial Welfare Commission.

6 SENATOR BEVERLY: Mr. Chairman.

7 CHAIRMAN ROBERTI: Senator Beverly.

8 SENATOR BEVERLY: I'm a little concerned about some
9 of his affiliations: the Legislative Marines Association and
10 the Derby Club.

11 MR. HANNA: That would be some problem.

12 CHAIRMAN ROBERTI: I know. It's a little on the
13 special interest side, but we may overlook it. We may try to
14 overlook that.

15 MR. HANNA: And my age was a setback, I understand.

16 CHAIRMAN ROBERTI: I've known Bob a long time. He
17 actually was supposed to come to our wedding. He showed up, but
18 he was a week late.

19 [Laughter.]

20 CHAIRMAN ROBERTI: Nevertheless, we appreciated the
21 present very much. It's the thought that counts.

22 Senator Craven's motion is before us. Secretary,
23 call the roll.

24 SECRETARY WEBB: Senator Beverly.

25 SENATOR BEVERLY: Aye.

26 SECRETARY WEBB: Senator Mello.

27 SENATOR MELLO: Aye.
28

1 SECRETARY WEBB: Senator Petris. Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Roberti.

4 CHAIRMAN ROBERTI: Aye.

5 The vote is four to zero; confirmation is recommended
6 to the Floor.

7 MR. HANNA: Thank you very much.

8 CHAIRMAN ROBERTI: The next appointment is Mr. James
9 Stockdale, Member of the Unemployment Insurance Appeals Board.

10 This is a reappointment, but we'll ask you hat we
11 asked the last time, and that is why you feel you're qualified
12 to maintain this position.

13 MR. STOCKDALE: Thank you, Senator.

14 I think this time I can, perhaps, be more definitive,
15 since I've now had four years of experience on the Board.
16 During that period of time, I've enjoyed the challenge, and
17 there have been many challenges. It's a very satisfactory
18 position. I feel that in terms of state service, it gives one
19 an opportunity to satisfy their needs to be helping people.

20 We've had challenges in the '80s. I would like to
21 look forward to help meet those challenges in the '90s.

22 CHAIRMAN ROBERTI: Thank you.

23 Is there any opposition in the audience? Do I hear a
24 motion?

25 SENATOR CRAVEN: Move.

26 CHAIRMAN ROBERTI: Senator Craven moves. Any
27 discussion or debate on the motion?
28

1 Secretary, call the roll.

2 SECRETARY WEBB: Senator Beverly.

3 SENATOR BEVERLY: Aye.

4 SECRETARY WEBB: Senator Mello.

5 SENATOR MELLO: Aye.

6 SECRETARY WEBB: Senator Petris. Senator Craven.

7 SENATOR CRAVEN: Aye.

8 SECRETARY WEBB: Senator Roberti.

9 CHAIRMAN ROBERTI: Aye.

10 The vote is four to zero; confirmation is recommended
11 to the Floor.

12 Thank you.

13 MR. STOCKDALE: Thank you.

14 [Thereupon this portion of the
15 Senate Rules Committee hearing
16 was terminated at approximately
17 2:12 P.M.]

18 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of June, 1991.


EVELYN J. MIZAK
Shorthand Reporter

